

COMMITTEE WORKSHOP
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Proposed Adoption, Amendment and)
Repeal of Regulations Governing the) Docket No.
Commission's Data Collection System) 05-DATA-1
for the Integrated Energy Policy)
Report and Regulations Governing)
Disclosure of Commission's Records)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
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COMMISSIONERS PRESENT

Jackalyne Pfannenstiel, Presiding Member

John Geesman, Associate Member

ADVISORS PRESENT

Melissa Jones

STAFF PRESENT

Chris Tooker

Caryn Holmes

Michael Jaske

Sandra Fromm

Andrea Gough

Al Alvarado

Jim McKinney

Jairam Gopal

Matt Layton

ALSO PRESENT

Andrew B. Brown, Attorney
Ellison, Schneider and Harris, LLP
on behalf of Constellation Companies

Douglas Kerner, Attorney
Ellison, Schneider and Harris, LLP
on behalf of Independent Energy Producers
Association

Vicki Thompson, Senior Counsel
San Diego Gas and Electric Company
Southern California Gas Company
Semptra Energy

ALSO PRESENT

Barbara McBride
Calpine Corporation

C. Susie Berlin, Attorney
McCarthy and Berlin, LLP
on behalf of Northern California Power Agency

Bruce McLaughlin, Attorney
Braun and Blaising, PC
on behalf of California Municipal Utilities
Association

Rod S. Aoki, Attorney
Alcantar and Kahl, LLP
Cogeneration Association of California
Energy Producers and Users Coalition

Maureen Lennon
California Cogeneration Council

Gregory Klatt, Attorney
Douglas and Liddell
on behalf of Alliance for Retail Energy Markets

Les Guliassi
Kathy Treleven
Pacific Gas and Electric Company

Tim Vonder
San Diego Gas and Electric Company

Jane Turnbull (via teleconference)
League of Women Voters

Bill Walsh (via teleconference)
Southern California Edison Company

Jennifer Chamberlain (via teleconference)
Strategic Energy

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P R O C E E D I N G S

9:30 a.m.

PRESIDING MEMBER PFANNENSTIEL: Good morning; this is the Energy Commission's second Committee workshop on the staff-proposed changes to the data collection regs for the Integrated Energy Policy Report.

I'm Commissioner Jackie Pfannenstiel; I'm the Presiding Member of the IEPR Committee this year. And to my right is Commissioner Geesman, who is also on the Committee. And to his right is his Advisor, Melissa Jones.

So with no further ado I'll turn it over to Chris.

DR. TOOKER: Thank you. I want to make a few announcements. This proceeding is being webcast. And to participate through the webcast you can go to the Energy Commission's website at energy.ca.gov; go to our webpage and on the left-hand column there is a webcast item that you can click on and that will take you to the webcast setup.

You can also participate by phone and that call-in number is 1-888-282-1669; the passcode is IEPR; and the call leader is Chris

1 Tooker. Due to an error on my part we don't have
2 a court reporter here today. We are going to save
3 the webcast and transcribe it. And that will be
4 posted on our website after it's transcribed.

5 I would like to ask if there are any
6 people currently on the phone; and if so, if they
7 can identify themselves.

8 Is there anybody on the phone?

9 Okay. Sandra, perhaps you could check
10 into that. I thought that we were told that there
11 were a few people waiting on the phone.

12 Sandra Fromm will be taking business
13 cards today, and she'll be taking notes regarding
14 specific terminology that's mentioned to assist in
15 transcription later. So, when you do provide
16 comments today, initially please state your name
17 and spell it for the record; provide a business
18 card to Sandra; and also when you make follow-up
19 comments, state your name.

20 I believe that's all I have, thank you.

21 PRESIDING MEMBER PFANNENSTIEL: Thank
22 you, Chris. I believe that we agreed that we
23 would proceed today through subject area, as the
24 regs are laid out. Having looked through all the
25 written comments received, can see that certain

1 subjects are of greater interest to some of the
2 parties.

3 So I think we probably should go through
4 the regs as they are presented. Chris, do you or
5 Caryn want to orchestrate the walk-through the
6 package?

7 DR. TOOKER: Well, at the previous
8 workshop Caryn went through and basically
9 summarized each of the sections, and then we took
10 comments. Would you like us to do that again?

11 PRESIDING MEMBER PFANNENSTIEL: That
12 sounds fine.

13 DR. TOOKER: Okay. Caryn.

14 MS. HOLMES: I believe the first section
15 of the regulations for which changes are proposed
16 are the Commission's regulations governing
17 complaint investigation proceedings. And I
18 believe that we got comments only from San Diego
19 and SoCalGas on that. They were questioning
20 whether it was necessary to shorten the time
21 period in which an answer must be filed. And I
22 believe they were also questioning the language
23 about the proposed decision.

24 Again, I'll restate what I said at the
25 first workshop, and that was that we wanted to try

1 to be able to provide for a more expedited process
2 if the facts indicate that that's appropriate, the
3 timing changes allow us to do it. They don't
4 necessarily bind the Commission to that, because
5 the Chair of the Commission or the Presiding
6 Member of any Committee have the authority under
7 other regulations to lengthen the time period.

8 So if it's not appropriate to provide a
9 response within the shorter period of time, then
10 it's always an option to seek a longer period of
11 time. And as people who were involved last summer
12 in the confidentiality proceeding, will recall we
13 did negotiate the times for various filings
14 amongst the parties.

15 With respect to the proposed decision,
16 again our intent there was simply to make it clear
17 that if the matter's heard before the full
18 Commission, a proposed decision is not required.
19 We only use a proposed decision when there's a
20 Committee hearing and a Committee document
21 summarizing what their recommendations are.

22 And, again, last summer when we
23 conducted our confidentiality proceedings, because
24 they were conducted before the full Commission, we
25 did not have a proposed decision. The intent of

1 the amendments in the regulations is simply to
2 make it clear that that process can be appropriate
3 and can be used by the Commission.

4 I don't know whether people want to
5 speak to that, or whether they want to move to the
6 data collection --

7 ASSOCIATE MEMBER GEESMAN: What I would
8 ask is if San Diego and SoCalGas desire to expand
9 upon or to explain their written comments on this.

10 And I pose that same question to each
11 party that has filed written comments. As we go
12 through this subject-by-subject-by-subject, if
13 you're satisfied with what you submitted in
14 writing you don't need to say anything. But if
15 you'd like to either expand upon what you
16 submitted in writing or explain that, it would
17 help Commissioner Pfannenstiel and myself.

18 PRESIDING MEMBER PFANNENSTIEL: Right.
19 Or if anybody had not addressed that specific
20 subject but then wants to, based on either what
21 Caryn has said, or somebody else, please use the
22 opportunity.

23 ASSOCIATE MEMBER GEESMAN: And recurring
24 commenters ought to grab a chair while they're
25 available.

1 DR. TOOKER: Commissioner Pfannenstiel,
2 I just want to re-emphasize that since we are
3 going to be depending on the webcast for
4 transcribing, please come to the table and take a
5 chair if you do plan to make comments. Or if you
6 make comments later, make sure you come to a mike.
7 But there are a number of seats available. We're
8 trying to save one seat next to us for staff to
9 come forward. But otherwise I think there are
10 four or five seats left.

11 And please turn off your cellphones and
12 beepers.

13 ASSOCIATE MEMBER GEESMAN: So does
14 either San Diego Gas and Electric or SoCalGas --
15 okay.

16 MS. THOMPSON: Thank you, Commissioner.
17 My name is Vicki thompson; I'm representing SDG&E
18 and SoCalGas.

19 DR. TOOKER: Would you please spell your
20 name?

21 MS. THOMPSON: V-i-c-k-i T-h-o-m-p-s-o-n.
22 I just wanted to make sort of an obvious
23 correction to our comments. We used the acronym
24 SCE by mistake --

25 (Laughter.)

1 MS. THOMPSON: -- for SoCalGas. Clearly
2 we're not representing SCE in this proceeding.
3 I'm just so used to typing SCE in various
4 pleadings, so it just came naturally.

5 As far as the section on the rules of
6 practice and procedure, I really have no
7 additional comments. I thank Caryn for the
8 clarification. We are just concerned that there's
9 so much to address in these changes that perhaps
10 more time should be given to these changes to the
11 rules of practice and procedure so we really
12 understand whether they'll disadvantage litigants
13 or not. Thank you.

14 PRESIDING MEMBER PFANNENSTIEL: Thank
15 you.

16 DR. TOOKER: I'd like to make one
17 follow-up comment that has to do with San Diego's
18 comments. When I compiled the comments I made an
19 error. On my desk there was a memo, an email
20 memo, that got collated into the packet. So, the
21 page following San Diego's comments has nothing to
22 do with San Diego. It shouldn't be there. You
23 can rip it out.

24 MS. THOMPSON: Oh, thank you, because I
25 was wondering where that came from.

1 (Laughter.)

2 MS. THOMPSON: It's a jinxed set of
3 comments, obviously.

4 MS. HOLMES: Just one quick response to
5 Ms. Thompson's comments, Commissioners. We
6 discussed this internally previously, and that is
7 one consideration; it's not something I'm
8 necessarily recommending at this point, but one
9 option for the Committee's consideration would be
10 to separate out the data collection proposals from
11 the two sets of procedural proposals, the
12 complaint investigation and the confidentiality
13 issues. And conduct those as two separate
14 rulemakings.

15 It's more work for staff, and
16 particularly for me, and it means that one will
17 necessarily lag because it's very very difficult
18 to do two at the same time. But if the Committee
19 is interested in pursuing -- seeking additional
20 comment or spending more time addressing
21 confidentiality or complaint investigation that is
22 a procedural avenue that will allow you to do that
23 without slowing down the data collection portion
24 of the rulemaking.

25 PRESIDING MEMBER PFANNENSTIEL: Thank

1 you, Caryn. Do you want to move on to the next
2 section then?

3 MS. HOLMES: Yes, let's --

4 MR. KERNER: I was -- with your
5 permission, Douglas Kerner for the Independent
6 Energy Producers Association. I think that staff
7 counsel's suggestion is a very good one, and could
8 be of potential help.

9 Commissioner Geesman, you had asked at
10 the very beginning are people ready to go, you
11 know, line-by-line. And I think you're going to
12 find, with regard to data collection, the answer
13 to that is probably not. And I know you've read
14 my comments. A lot of it has to do with a failure
15 to understand exactly to whom each, you know,
16 provision applies. And probably some offline time
17 with the staff would be helpful with that.

18 ASSOCIATE MEMBER GEESMAN: Mr. Kerner,
19 were you at our earlier workshop?

20 MR. KERNER: Yes, sir.

21 ASSOCIATE MEMBER GEESMAN: And have you
22 availed yourself of any opportunity to meet with
23 the staff between that workshop and this workshop?

24 MR. KERNER: We have -- I have not.

25 ASSOCIATE MEMBER GEESMAN: Okay. Thank

1 you.

2 MR. BROWN: Andrew Brown appearing for
3 Constellation Companies. We did provide written
4 comments on a detailed table that ran through I
5 don't know how many lives.

6 Also, I guess we would support the
7 notion of breaking out the two because the data
8 collection does have a whole different set of
9 essentially fundamental issues associated with it.
10 And then down to the very detailed issues.

11 With respect to these procedural issues,
12 our table, line 3, asking that the shortening of
13 time be reconsidered. One of the things that we
14 believe can happen in the longer timeframe is to
15 work out solutions between the Commission Staff
16 and the participant.

17 When you cut things down to two weeks it
18 pretty much forecloses that opportunity, I think.

19 And so to codify a very abbreviated time
20 schedule may actually be counter-productive.

21 PRESIDING MEMBER PFANNENSTIEL: Thank
22 you.

23 MR. McLAUGHLIN: I have a comment.
24 Bruce McLaughlin, California Municipal Utilities
25 Association; that's B-r-u-c-e M-c-L-a-u-g-h-l-i-n.

1 I actually concur with IEP. I had the
2 opportunity to have several phone calls with CEC
3 Staff and also invited them over to our offices
4 and three staff members came over, including Mr.
5 Jaske.

6 And one of the subjects was definitions.
7 I then diagrammed these definitions as currently,
8 and I could not figure it out. They overlap they
9 are confusing. Mr. Jaske had a very very good
10 reason for his or staff's intent, trying to divide
11 them by functional role. But still I think
12 there's a little bit of overlap.

13 Also the Cogen Association had comments
14 on the definition of LSE, as does CMUA. So I
15 think these definitions are -- who this applies to
16 is actually a very very important question that
17 should be dealt with.

18 MR. VONDER: Tim Vonder, SDG&E. I'd
19 also like to support those two fellows.

20 ASSOCIATE MEMBER GEESMAN: Tim, can you
21 spell your name, please?

22 MR. VONDER: Tim, T-i-m, Vonder, V-,
23 like in victory, -o-n-d-e-r. San Diego Gas and
24 Electric.

25 As you read through our comments I'm

1 sure that you saw in many sections we would really
2 like to comment on the content, but we had
3 problems with the terms.

4 There's a lot of new terms that even
5 those of us who have been involved with this for
6 many years, now that we've got ESPs and LSEs, you
7 know, other than just the munis and the IOUs, a
8 lot of new terminology is cropping up here since
9 deregulation.

10 And these terms really need to be
11 defined before we can really comment on the
12 content of the section. If we knew what the new
13 terms meant I think we can offer more constructive
14 criticisms.

15 So, for that reason we'd like to suggest
16 that more workshops be held so that we can discuss
17 this and get a good understanding of what it is
18 we're being asked to help you ferret out.

19 MS. SPEAKER: Can I ask a question? I
20 think this goes back to CMUA. In referring to
21 discussions with Mike Jaske, and understanding the
22 functional role in terms of the way the staff has
23 approached the definitions.

24 Do you have an objection to the
25 functional separation of data collection? Because

1 that's what's called for in the statute. Or is it
2 a broader question?

3 DR. TOOKER: No, that is exactly right.
4 We actually refer to that statute as we've talked
5 about it and we discussed that. And so I
6 acknowledge that that's a proper way.

7 But the names, the taxonomy, as we
8 called it, were sort of confusing.

9 PRESIDING MEMBER PFANNENSTIEL: Are
10 there other public comments?

11 MR. KLATT: Yes, thank you. Good
12 morning. Gregory Klatt, G-r-e-g-o-r-y K-l-a-t-t,
13 as in Tom, for the Alliance for Retail Energy
14 Markets.

15 And I'm a bit torn here this morning
16 about the suggestion to possibly bifurcate the
17 proceeding. There may very well be some merit to
18 that, however with respect to confidentiality
19 perhaps our biggest issue is the desire to have
20 more types of data categories designated as
21 confidential upfront.

22 And our thought that doing that might
23 very well streamline the next IEPR cycle by
24 reducing the need for proceedings to go through
25 the confidentiality application process.

1 And I understand that trying to develop
2 upfront categories might take a little bit more
3 time than had been slated for attention to the
4 confidentiality. I'm a bit torn because we would
5 very much like to have that done prior to the next
6 data collection cycle. And my concern is that if
7 we bifurcate the proceeding that that may not be
8 possible.

9 At the same time we also have some
10 significant issues with respect to the data
11 collection regulations, the proposed changes. I
12 have a feeling that we might be able to work some
13 of those out with staff. We did not avail
14 ourselves of the opportunity to meet with staff
15 since the last workshop. We would certainly like
16 to do that in the near future.

17 And based upon our experience in the
18 last cycle we think that could be very productive,
19 particularly with respect to addressing the three
20 main issues that were identified in the notice for
21 this workshop. Thank you.

22 PRESIDING MEMBER PFANNENSTIEL: Yes.

23 MS. THOMPSON: Vicki Thompson with
24 SDG&E/SoCalGas. Just wanted to respond to
25 something Mr. Klatt said about the difficulty, or

1 the time-consuming process of identifying various
2 categories. I just wanted to just observe that
3 the California Public Utilities Commission has
4 already started that process.

5 We do have -- we've spent, as you well
6 know, many long hours trying to identify
7 particular categories of information that are
8 confidential and not. There's been no decision,
9 as we all know, from the California Public
10 Utilities Commission. But at least that effort
11 has started.

12 MS. HOLMES: I think perhaps the next
13 place to turn to is section 1302, which is the
14 definition section. The definitions in 1302 apply
15 to both the QFER regs as well as the CFM regs,
16 except for the loads and forecasts.

17 So what might be most useful is first,
18 since Dr. Jaske has availed himself of a seat at
19 the table, for him to -- and he's also apparently
20 had some discussions with some of the stakeholders
21 about the definitions, is to explain what the
22 staff's approach is.

23 We had a lot of debate internally about
24 whether we should try to get the definitions right
25 in section 1302, or whether we should simply go in

1 each section that imposes a substantive reporting
2 requirement to try to say who has to comply with
3 the reporting requirements for that section and
4 each section.

5 And it may be that that's what we have
6 to revert back to, but that seems rather unwieldy.
7 To the extent that we can identify and
8 appropriately classify categories of market
9 participants who have to respond to certain types
10 of reporting requirements, we'd like to do that,
11 rather than to identify each group by what their
12 function is in each individual reg that has a
13 reporting requirement in it.

14 So, our intent was to try to create some
15 categories up front that would apply throughout
16 the regs. And there may be specific instances
17 where you need to have exceptions within an
18 individual regulation. But we were trying to
19 minimize getting into the details of the functions
20 of the various market participants in each
21 individual regulation.

22 Mike, do you want to explain how we
23 tried to do that?

24 DR. JASKE: Mike Jaske, J-a-s-k-e, CEC
25 Staff. I think I should start from the comment

1 that Mr. McLaughlin made. It's clearly been the
2 trend, if you will, in modification of these
3 regulations over the last five or six years to
4 move in the direction of classifying, or devising
5 them on the basis of the function being performed;
6 and therefore, data appropriate to that function.

7 That began with, for example, in the
8 1999/2000 round, relieving utilities of reporting
9 generating data and shifting to generators
10 reporting generating data. That concept was, in
11 considerable respects, embodied into SB-1389, I
12 believe, in the section 25320 or something like
13 that, that Mr. McLaughlin referenced in his
14 comments, CMUA's comments, about the approach that
15 the Energy Commission should take in obtaining
16 data from market participants.

17 So, these regs -- staff's proposed regs
18 continue to go in the direction of trying to
19 create terms that embody functionality. And then
20 in the specific data collection regs, themselves,
21 defining what is a particular category the entity
22 should supply.

23 And what has become more clear as a
24 result of the conversation that Mr. McLaughlin
25 referenced earlier today is that in some

1 instances, at least, there are two -- there's a
2 separate layer of complication beyond
3 functionality.

4 There is no question that all of these
5 folks around this table and the other parties to
6 this proceeding understand what a load-serving
7 entity is, you know, as defined here in section
8 1302, paragraph 16.

9 What I think is really the complication
10 is not the function of being a load-serving
11 entity, but that subsets of load-serving entities
12 are under different kinds of regulation.

13 So, in the particular case of section
14 1346 on resource adequacy that Mr. McLaughlin
15 references in CMUA's comments, he's essentially
16 saying that because AB-380 pertains in its
17 subsection the created Public Resources Code 9604
18 that there should be a separation between the
19 resource adequacy requirements for POUs versus the
20 resource adequacy requirements for other kinds of
21 entities.

22 Mr. Klatt, in AREM's comments, is
23 offering up another example of the same concept.
24 There's no question that ESPs are load-serving
25 entities by this definition. AREM objects to a

1 particular subset of load-serving entities that
2 are ESPs, privately held companies, that are not
3 under the kind of rate regulation of the
4 utilities, having to report data, retail price
5 data, in the same manner and under the same
6 conditions as, for example, investor-owned
7 utilities under the regulations of the PUC.

8 So, what I think is emerging here is
9 that there's nothing wrong with functionality as a
10 primary device to organize how data is to be
11 provided. But there are, at least in some
12 instances, --

13 PRESIDING MEMBER PFANNENSTIEL: Mike,
14 I'm going to just ask for a pause for a second.
15 They need to reconnect the telephone line. And
16 then I'd ask you to pick up where you're going.

17 (Pause.)

18 MS. TURNBULL: Jane Turnbull, League of
19 Women Voters.

20 MR. WALSH: Bill Walsh, Southern
21 California Edison.

22 MS. CHAMBERLAIN: Jennifer Chamberlain;
23 Strategic Energy.

24 PRESIDING MEMBER PFANNENSTIEL: Thank
25 you for those who just joined us. We apologize

1 for the technical difficulties. I'm not going to
2 try to recreate the first half hour, but there
3 will be a transcript and we'll bring back -- I
4 think that there may be an opportunity at some
5 point to maybe summarize some of the issues that
6 have been raised.

7 And I would say that right now we're
8 kind of debating the question of making sure that
9 the definitions that people were thinking about in
10 sending in their comments were consistently
11 understood.

12 Mike Jaske is walking through the
13 rationale for the definitions as we have them.
14 With that, I'll turn it back to Mike.

15 DR. JASKE: So, I think it has become
16 more clear that there may well be a necessity in
17 the individual data collection regs to clarify the
18 specific filing requirements that are appropriate
19 to a subset of a broader class of entities that
20 because of different kinds of rate regulation
21 might vary in either a different amount of depth
22 of filing of particular broad category data.

23 And as was the functional practice in
24 the 2005 IEPR process of submitting data requests,
25 confidentiality requests and processing of those,

1 perhaps some differential treatment about the
2 protection afforded to these types of data because
3 of, in effect, the rate regulation status of
4 different entities.

5 And we certainly have made some attempts
6 in the staff proposal of April to do this. But I
7 think what has become clear to me is that at least
8 in some instances, some further separation of the
9 specific filing requirements on the basis of
10 different regulation might be an appropriate sort
11 of clarification of what's actually intended, and
12 how it would be treated.

13 PRESIDING MEMBER PFANNENSTIEL: Are
14 there comments or reactions to that?

15 MR. KERNER: Based on my understanding
16 of -- Douglas Kerner for IEP -- my understanding
17 of Mr. Jaske's remarks, I am of high enthusiasm
18 for the attitude that he's bringing to bear.
19 Those are, in large part, precisely the kinds of
20 issues with which we had particular concerns.

21 Functionality is a good paradigm; it
22 doesn't work real well when there are multiple
23 cross-overs among the people that you are
24 attempting to disaggregate and distinguish
25 between. And it sounds like the kind of exercise

1 that Mike is proposing here, certainly is one that
2 we would enthusiastically participate in, as we
3 did in 2000 with great success.

4 We were very happy with the way the
5 regulations came out. Not perfectly happy,
6 Commissioner, but we were very happy with it.

7 ASSOCIATE MEMBER GEESMAN: Let me ask
8 you, Doug, if you've been happy with how they have
9 been applied since they were adopted? Because,
10 you know, to the extent that we aren't able to
11 change the regulations for the '07 IEPR cycle, you
12 can predict quite reliably our staff is going to
13 be before us with proposed forms and instructions
14 for the '07 cycle based on the old regs.

15 That, you know, if there are
16 opportunities now for us to improve, I think the
17 Commission feels we ought to improve them. There
18 have been complaints about the way the old regs
19 have been applied. And I'm curious as to what
20 your experience has been.

21 MR. KERNER: That's a fair point, and I
22 appreciate very much that invitation. I did not
23 personally have any, you know, -- and it would
24 only be anecdotal information that goes to your
25 question, you know, as to how it's going so far.

1 I can tell you that as you seek more
2 comments, you know, with regard to the current
3 proposal, you know, we had some heads kind of
4 exploding both in the category of what am I
5 supposed to do, who am I, and this is way too much
6 stuff -- I get it. So we had multiple categories
7 of things, but I think Mr. Jaske is well equipped,
8 based on prior experience, and his crack staff to
9 try to figure out.

10 ASSOCIATE MEMBER GEESMAN: I guess the
11 one thing I'd observe is heads exploding, who am I
12 and what am I supposed to do, I think could quite
13 well categorize the reactions that we received
14 from some in response to the forms and
15 instructions that we adopted under the regs for
16 the '05 cycle.

17 So, the reaction may be quite similar if
18 we're unable to improve the underlying regs before
19 the '07 cycle starts.

20 MR. KERNER: That also is pertinent to
21 the current question, and it's one however
22 obliquely I may have made the point, in one of the
23 observations that we made with regard to these
24 regulations is that, I'm sure the staff has --
25 they're doing well, they're trying very hard to

1 glue all this stuff together.

2 But bearing in mind, however, that at
3 the end of the day what really matters is what the
4 forms and instructions look like. And the
5 promises are, don't worry. We have asked, you
6 know, parenthetically we think this is bad
7 regulation, but nonetheless, you know, we've
8 pretty much -- what we've gone for here is maximum
9 flexibility.

10 We're probably not going to do that,
11 right, at the end of the day? And you'll see that
12 in the forms and instructions. And it is rather
13 difficult, you know, from our perspective, to be
14 commenting on a set of regulations, as well.

15 Fundamental, we can do anything we want;
16 don't worry about it. Because later on you guys
17 are going to say no, no, no, we're going to, you
18 know. We're limited, pare it down and get it into
19 a sensible, whatever, you know, a functional
20 paradigm or something else.

21 Part of our problem -- I'm thinking
22 another working process, as we did the last time,
23 would make some sense. If the staff is willing.
24 And I'm sensing that even Mr. Jaske, who knows
25 more about this stuff than anybody in the world,

1 you know, is willing to hack through this stuff a
2 little bit.

3 DR. JASKE: The 2007 IEPR Committee
4 hearing of last week or the week before, whatever
5 it was, clearly identified, in a broad scheduling
6 way, the issue of forms and instructions. And
7 staff's in the process of thinking through how to,
8 in effect, adapt what was proposed in the 2005
9 IEPR cycle, and bring those forward.

10 As you suggest, Commissioner Geesman,
11 we'll have to operate on the basis of the existing
12 regs for 2007 data submissions, and the statute,
13 itself. And so we will necessarily have to be
14 horse-trading what we do for 2007, as we did for
15 2005.

16 Part of our objective in these regs is
17 to appropriately define the broad categories of
18 things that we want to collect routinely. And in
19 some instances, shift from the sort of the process
20 where individual IEPR cycle forms and instructions
21 define what's provided, which might differ from
22 cycle to cycle into something that's more
23 standardized.

24 Then I think the generation -- regs is a
25 good example of that, where there are, in effect,

1 dimensions about the environmental consequences of
2 generators that we think are not forward-looking,
3 but are, in fact, descriptors of the present or
4 the recent past and are, you know, more
5 appropriately the kind of things that are like the
6 QFER regs.

7 And so we have proposed generator
8 environmental impact regs that, broadly speaking,
9 would routinize the submission of data. Some of
10 which would be sort of one-time catch up, and some
11 of which would be, you know, recurring, recurring
12 basis.

13 So, I think we're certainly willing to
14 go in the general direction that Mr. Kerner's
15 talking about. But we have to -- unfortunately
16 now the time scale that we're on, we're going to
17 be simultaneously revising these regs, and
18 formally dealing with a rulemaking process, and
19 the forms and instructions for 2007.

20 So somehow or other we're going to have
21 to balance, you know, time allotted to both of
22 those two things. And do so within the next
23 couple months.

24 PRESIDING MEMBER PFANNENSTIEL: That is
25 a challenge. Other comments?

1 MR. BROWN: Andrew Brown from
2 Constellation. The Constellation entities that
3 I'm here for include Constellation New Energy,
4 which is an ESP, as well as entities affiliated
5 with Constellation Generation Group, which
6 includes merchant power plant, and also qualifying
7 facilities.

8 And so we've looked at these regs a
9 couple different ways. And the fundamental issue
10 we've been talking about, which is sort of these
11 definitions, terms, to figure out who does what,
12 and what pigeon-hole you follow, was very
13 difficult.

14 And I do think there is an opportunity,
15 perhaps, to look at how some of these terms are
16 defined in other statutory provisions. And
17 essentially just sort of, you know, use those as a
18 means of defining things. In certain cases I
19 think it might work well.

20 For instance, when we looked at the
21 definition of load-serving entity, and then right
22 underneath that, electric utility, and we were
23 trying to do the Venn diagram concept. It seemed
24 like they were the exact same circle.

25 And from an ESP's perspective, that's

1 difficult because, you know, in our mind we're
2 fundamentally different than an electric utility,
3 as that term would commonly be used.

4 And so I do think that we can benefit
5 perhaps from borrowing from other statutory
6 provisions, either in the Public Resources Code,
7 but also in the Public Utility Code.

8 PRESIDING MEMBER PFANNENSTIEL: Caryn,
9 where do we go with this now?

10 MS. HOLMES: Well, -- the last workshop
11 I think it would be helpful to go through
12 regulations one-by-one. Some people filed
13 comments on many, some people filed comments on
14 just one or two.

15 To the extent that this issue is
16 (inaudible) who reports what, is it appropriate to
17 have ESPs reporting the same thing as utilities.
18 I think we ought to -- walk through these
19 individual sections. And that way we may be able
20 to, at the end, is go back in our path for making
21 additional changes to the 1302 definitions may be
22 a little bit clearer.

23 And I think we all (inaudible)
24 conceptually, but not what the point is. I'm not
25 sure we all understand where people believe the

1 distinctions ought to apply (inaudible).

2 PRESIDING MEMBER PFANNENSTIEL: I think
3 that's good and I agree with that. I would ask,
4 though, that as we go through the regs --
5 Commissioner Geesman and I have read the written
6 comments, and we sat through the last workshop on
7 this.

8 And so what we're looking for is
9 solutions. We're looking to move this forward.
10 And so I would ask in your comments to give us
11 guidance in that ground. Where is there room for
12 compromise. Where might things be effected this
13 time or put off perhaps for later consideration.
14 Where does it make sense to bifurcate the
15 proceeding or not bifurcate.

16 We all understand the time constraints
17 and so we're not being -- I don't want to be
18 cavalier about that. I think that's a real
19 constraint for this proceeding.

20 So, let's go through the sections and
21 look to the assembled parties for help in solving
22 this.

23 DR. TOOKER: I just wanted to again
24 notify those people on the phone who may not have
25 heard it before, that this workshop is being

1 webcast and you can access the webcast on the
2 Commission's website at www.energy.ca.gov, going
3 to the webpage and then clicking on the left
4 column on webcast.

5 And, also, are there any people on the
6 phone now who, if you want to make comments,
7 please identify yourself and spell your name for
8 the record when you do so. Thank you.

9 PRESIDING MEMBER PFANNENSTIEL: Thank
10 you.

11 MS. HOLMES: Then let's move to section
12 1303. We received comments from Constellation and
13 CMUA. Some of them are comments I can respond to
14 fairly quickly.

15 CMUA had asked that our regulations
16 accommodate companies that use a fiscal calendar
17 as opposed to -- or a fiscal year rather than
18 calendar year. We do have a section in section
19 1303 that talks about extension of deadlines.

20 I'm not aware that there's a problem,
21 given that that provision is in there, where the
22 situation that you specifically were talking
23 about. Has this failed to work, this extension-
24 of-deadline provision that we have, for your
25 members?

1 MR. McLAUGHLIN: Well, I think our
2 members, as you are now expanding the group that
3 you're requesting data from, have less experience
4 with the IEPR than the IOUs, for instance. I
5 guess we'll get plenty of experience.

6 Nonetheless, when your fiscal year ends
7 in June, as the comments we were making
8 demonstrate, if you're asking for information in
9 September, the other entities possibly have six or
10 seven months to comply, and then we're just
11 furiously attempting to put that together.

12 Or possibly the data that you're
13 collecting doesn't represent the same group, so
14 we'd have to go back and start collating data that
15 wasn't going to be collated for another six
16 months.

17 So it's a burden on us if we're out of
18 synch. And I guess we could try that exemption,
19 but I would ask for something more progressive
20 where you would get the right information so that
21 your report, when it came out, the IEPR, that is,
22 would truly represent where that particular POU
23 was, as opposed to six months behind.

24 MS. HOLMES: Right. I guess, you know,
25 the question the Committee will have to address is

1 do you want to accept information that may be more
2 dated from those entities that work on a fiscal
3 year basis rather than a calendar year basis.

4 And if you do, is that something that
5 you want to formally put into the regulations, or
6 do you just want to leave the language that we
7 have now that's been in there for a number of
8 years, regarding extension of deadlines.

9 You have a couple of choices for dealing
10 with that. It is a problem for you, given the
11 date that you have to put out your IEPR, and we
12 are aware of that.

13 ASSOCIATE MEMBER GEESMAN: I wanted to
14 raise a question to Mr. McLaughlin. At the
15 workshop that we held a couple of weeks ago, Scott
16 Tomashefsky, in speaking of fiscal year filers,
17 seemed to consistently gravitate to a federal
18 fiscal year, contrary to my impression that your
19 public members are more commonly on a June 30,
20 what I would characterize as State of California
21 fiscal year. Your written comments seemed to
22 focus on June 30 fiscal year filers.

23 What are we talking about? Are we
24 talking about almost all of your members, or
25 perhaps all of your members on a June 30? Or do

1 you have some that are on a September 30, as well?

2 MR. McLAUGHLIN: We have calendar filers
3 and we have fiscal filers, both. I would say a
4 substantial majority are on the fiscal, so July to
5 June 30th.

6 ASSOCIATE MEMBER GEESMAN: Okay.

7 PRESIDING MEMBER PFANNENSTIEL: But only
8 that fiscal year, not the federal fiscal year?
9 Not the October 1st to September 30th?

10 MR. McLAUGHLIN: I don't know of any.

11 MS. BERLIN: Susie Berlin here for the
12 Northern California Power Agency.

13 ASSOCIATE MEMBER GEESMAN: I'm afraid
14 you have to spell it, Ms. Berlin.

15 MS. BERLIN: Susie, S-u-s-i-e, last name
16 Berlin, B-e-r-l-i-n.

17 And I did want to clarify that the
18 fiscal year that we're talking about for the
19 majority of our numbers, Northern California Power
20 Agency numbers, is the June to July year. We also
21 have members that are on a calendar year.

22 But with regard to the deadline for
23 submitting reports, we'd prefer something more --
24 don't know how to put this -- if we're only on a
25 fiscal year, our schedule is never going to

1 change.

2 So instead of every year having to file
3 for an extension, we would prefer to see something
4 in the rules up front that says, this is the
5 deadline if this is the end of your year, and this
6 is the deadline if that's the end of your year.

7 ASSOCIATE MEMBER GEESMAN: I think
8 you've made that point in a pretty understandable
9 fashion.

10 MS. BERLIN: Thank you.

11 DR. JASKE: Mike Jaske, CEC Staff. I
12 think in large measure this is something, a
13 distinction between calendar and fiscal, something
14 staff is willing to live with in this section.
15 And certainly are willing to talk with parties
16 about individual instances.

17 The great majority of the data that's
18 asked for in the so-called QFER parts of the regs
19 is monthly information coming in on a quarterly,
20 or in some instances, an annual basis. And the
21 majority of that is filed quarterly.

22 So I don't actually think this annual
23 issue is much of an issue, frankly, for the
24 majority of these regs.

25 MS. HOLMES: A second point that was

1 raised with respect to this section has to do
2 with, I believe it was CMUA's comments again,
3 about whether subdivision (h) refers to data that
4 was submitted to other agencies, or only submitted
5 to the CEC.

6 And my understanding is that subdivision
7 (h) covers information that has been previously
8 submitted to the CEC. Subdivision (i) refers to
9 information that was submitted to other agencies,
10 and is typically in a different format.

11 And that subdivision establishes a
12 process for the Executive Director to review it
13 and say is it okay to submit it in this separate
14 format, or to refer to it, if it's accessible
15 publicly, given the differences in format.

16 And, you know, I'm not personally
17 familiar with how often those kinds of requests
18 come in, whether it's been a problem or not. So,
19 if parties have experience with that, and believe
20 that there's some improvement that can be made
21 based on that experience, I think this would be a
22 good time to hear it.

23 ASSOCIATE MEMBER GEESMAN: Before we do
24 that, let me ask, our statute seems to guide us
25 pretty strongly to relying on information

1 submitted to government agencies in general, does
2 it not?

3 MS. HOLMES: Yes, it does.

4 ASSOCIATE MEMBER GEESMAN: And in your
5 efforts to make a proposal for new regs, have you
6 attempted to follow that direction? Or have you
7 had a preference to CEC submittals having some
8 higher status?

9 MS. HOLMES: Well, I provided that -- I
10 did not write these regulations, despite that my
11 name is on the front of them. I provided guidance
12 to staff and said that that was a guiding
13 principle of the statute. And what you see is
14 their response to that.

15 When we had discussions about this a
16 number of times I received comments along the
17 lines of information may be submitted to other
18 agencies, but it's extremely -- it's in a
19 different format and it's very very difficult for
20 us to use with the analytical tools that we have
21 without a great deal of staff resources.

22 And so perhaps when we --

23 ASSOCIATE MEMBER GEESMAN: The
24 Legislature didn't know that when they drafted the
25 statute?

1 MS. HOLMES: I think that it would
2 probably be appropriate to identify the scope of
3 those differences and ask staff to be very
4 specific about those kinds of problems as we go
5 through the sections where other people say, hey,
6 wait a minute, we already give that information to
7 the PUC. Why can't you use it. I think that's an
8 appropriate question to ask. I don't know the
9 answer to that.

10 PRESIDING MEMBER PFANNENSTIEL: And the
11 comments we received were replete with that.

12 MS. HOLMES: They were, they were. And
13 frankly, I'm not surprised, given the amount of
14 filings that I'm familiar with personally that are
15 made to other regulatory agencies.

16 ASSOCIATE MEMBER GEESMAN: I understand
17 the staff's perspective; but I think we're
18 governed by the statute. And I think the
19 Legislature had it within its cognizance that
20 there might be different formats where it might
21 require an extra level on the part of the
22 Commission Staff to adapt that data.

23 But I think the statute still pretty
24 clearly says we're supposed to rely on that, where
25 we can.

1 MS. HOLMES: You won't get any argument
2 from me about that.

3 MR. McLAUGHLIN: May I comment on that?

4 MS. HOLMES: Yes.

5 MR. McLAUGHLIN: I mean this is a great
6 place to --

7 MS. HOLMES: Please identify yourself so
8 we can get this transcribed.

9 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
10 As just mentioned by Commissioner Geesman, if
11 there's two subjects that were woven throughout
12 all comments, it was one, the who; and then the
13 what. And 25320(b)(4) has to deal with data
14 provided to other agencies.

15 And I think primarily we were all
16 willing to point to we're already reporting to the
17 FERC or to Cal-EPA or et cetera, and if the -- as
18 guidance, as you asked for, Commissioner
19 Pfannenstiel, if the Commission were to have a
20 workshop where we were to sit around the table
21 and, well, we all report this to this, and
22 confidentiality set aside for a minute, but these
23 reports are already out there.

24 And then staff would take that little
25 bit of manipulation, hey, we've already got this

1 amount of data which we didn't know about yet.

2 Let's just figure out how we're going to transmit
3 that into the IEPR. Boy, the burden would just
4 drop tremendously and the process, the information
5 gathering would be immensely enhanced, it seems to
6 me.

7 DR. TOOKER: I'd like to ask for a point
8 of clarification. this is Chris Tooker, the
9 Commission Staff. Are the comments here that
10 staff then should be acquiring that data from the
11 other agencies? Or that they could acquire it
12 from the providers in the same format as provided
13 to the other agencies?

14 ASSOCIATE MEMBER GEESMAN: No, I think
15 at least speaking for myself, I would look at that
16 provision of the statute and try to discern the
17 priority, which I believe the statute makes pretty
18 clear, that we are to place on relying upon data
19 that is already reported to other agencies.

20 I don't care who you get it from. And I
21 don't believe the statute has a view on that. I
22 would suggest, from a managerial standpoint, you
23 ought to get it in the most expeditious fashion
24 you can, and the most efficiently.

25 But the concern that that data, as filed

1 for example with FERC or with EIA, or with a local
2 air district, is insufficiently granular, or is
3 not in the format that is easiest for us to work
4 with. I think some of these areas we're not going
5 to get MRI quality data.

6 I think the Legislature recognized that
7 and said you've got plenty of work to do. Work
8 with what you can get.

9 DR. TOOKER: Thank you.

10 PRESIDING MEMBER PFANNENSTIEL: Further
11 comments on this area?

12 MR. KLATT: Thank you. I'm Greg Klatt
13 for AREM. I just wanted to echo these comments.
14 The ESPs would look upon that type of change where
15 they're able to just submit data that's previously
16 been submitted to FERC or EIA as very helpful and
17 it would go a long ways to reducing the reporting
18 burden.

19 Just to put kind of a face on it, I've
20 been told by one of our members that they have a
21 staff person spending about 15 hours each week
22 just to put together all the different types of
23 reports that they have to submit in California,
24 which is, at this point, becoming kind of the
25 biggest collector of data in this area.

1 So this type of consolidation of
2 reporting would be very helpful. And we would,
3 although we haven't done in our comments
4 previously, we could attempt to do that in a
5 letter of submission, try to match them up.

6 PRESIDING MEMBER PFANNENSTIEL: I think
7 both because it's a reasonable thing to do, and
8 because we're required under statute to do that,
9 we will look to making those changes.

10 MR. VONDER: Excuse me. Tim Vonder,
11 SDG&E. Again, I'd like to concur with what others
12 have said in this regard. And also just to point
13 out, as an example, I know we're going to get to
14 section 1346 in just a few minutes, but 1346 deals
15 with resource adequacy. And that's a perfect
16 example of what we're talking about here.

17 We've gone through the process of
18 developing all of the information and submitting
19 this to the CPUC. And regulation 1346 here asks
20 for exactly the same thing. So, that's clearly a
21 case where all we have to do is point to the
22 information that we submitted to the PUC and say,
23 this will take care of it for me.

24 And that's just one example. But it's a
25 perfect example.

1 PRESIDING MEMBER PFANNENSTIEL: Thank
2 you.

3 MS. HOLMES: There was one other comment
4 with respect to section 1303(m)(2) that was filed
5 by Constellation. And I believe we addressed it
6 at the last workshop. It has to do with accuracy
7 of customer classification coding. And what
8 recourse does the Commission have when they get
9 sales data that doesn't seem to be accurately
10 classified.

11 I don't know, Andy, if you want to go
12 through it again. We discussed it at the last
13 workshop.

14 MR. BROWN: Yeah, we understand that
15 traditionally you would get this information from
16 the utility because it was, in part, related to
17 utility distribution, --

18 MS. HOLMES: Right.

19 MR. BROWN: -- rate schedule
20 classifications. The primary concern that we have
21 is the use of the word audit. The notion of
22 having a competitor look at how your data
23 submission and correct it is what we took away
24 from the concept of audit.

25 And we think that either by, you know,

1 letting you know, if you could correlate rate
2 schedules to these classifications, I think the
3 ESP would perhaps know what type of entity their
4 customer is.

5 And so the whole question is whether or
6 not you can just deal with the ESP directly and
7 fix this. Or if you actually need to go run
8 essentially to their competitor to have it fixed.

9 MS. HOLMES: And my understanding is
10 that we've tried working with ESPs and we don't
11 get the impression -- would it make you more
12 comfortable if we simply said, he or she,
13 referring to the Executive Director, may require
14 the appropriate UDC or gas utility to verify the
15 accuracy of the customer classification, so the
16 word audit or comparable study is removed from the
17 regulation?

18 It's existing language, but I'm not
19 sure --

20 MR. BROWN: And this is when we're
21 getting into some of those divisions. I take it
22 by UDC you're now looking at an electric utility
23 and you're making functional divisions between the
24 commodity provision portion, a distribution
25 division and a transmission division.

1 MS. HOLMES: That's correct.

2 MR. BROWN: And, you know, one, I don't
3 know if that functional division really truly
4 exists. And, two, I would think that you could
5 just go -- the issue here is that you're saying
6 that an ESP has submitted information and you
7 don't think it's accurate, so you're going to go
8 to their competitor to find out what the right
9 answer is.

10 And that's just sort of the -- it seems
11 to me that you go to the ESP and you figure it out
12 by finding out, you know, more about perhaps the
13 customer. Because some of these classifications,
14 there's a degree of interpretation to them.

15 And so, I think, you know, the
16 preference would be not going to the competitor to
17 fix this --

18 MS. HOLMES: Well, this is existing
19 language, for the most part. And so, I would be
20 reluctant, to the Committee, at this point, to
21 recommend that they get rid of existing language
22 that's designed to address a problem, unless we
23 have some other solution for what do we do when
24 the sales data isn't accurately -- I don't think
25 we need to spend a lot of time on this. Perhaps

1 this is something that --

2 MR. BROWN: Well, I think, just to give
3 you a notion of the perspective that we took when
4 we were looking at this, in light of changes that
5 have occurred from restructuring, which is a
6 driver to a number of revisions to the reg, we
7 were seeing this as an opportunity to maybe
8 address that.

9 So, you know, whether it's on or off the
10 table is something that the Commission will
11 decide. But we do think this is an opportunity to
12 look at these sections. Look at what the statutes
13 are calling for, the degree of precision that the
14 statute may or may not demand. And recast the
15 regs accordingly.

16 So, you know, in the past when there
17 were only bundled customers, when you looked at
18 this reg you were simply talking about going back
19 to the utility and getting it corrected. Now we
20 have a division here on the commodity side, and
21 there's a sensitivity there, that's all.

22 ASSOCIATE MEMBER GEESMAN: Does this
23 particular language predate restructure?

24 MS. HOLMES: I don't know the answer to
25 that question. I'd have to go back and look at

1 the old CCRs. Andrea, do you recollect?

2 MS. GOUGH: No, it was created after
3 restructure.

4 DR. TOOKER: You need to spell your
5 name, Andrea.

6 MS. GOUGH: Andrea Gough, G-o-u-g-h,
7 Energy Commission Staff.

8 I wanted to clarify how this reg came
9 about in 2000, and that is that as part of 1306
10 the utilities, the UDCs, provide the customer
11 classification codes to the ESPs. And so we hold
12 them ultimately responsible for the accuracy of
13 those codes.

14 And so it's not so -- it wouldn't be
15 auditing the ESPs' classifications, but how the
16 utility is classifying the customer.

17 That was one of, I believe it was
18 Constellation's comments about 1306 was why is the
19 utility, you know, classifying the customers, not
20 the ESPs. And during the 2000 reg revision we
21 heard from the ESPs saying it was a burden to them
22 to classify their customers. And since the
23 utilities had already gone through tremendous
24 effort classifying customers, we left that burden
25 on them to classify each electric and gas customer

1 by customer classification.

2 ASSOCIATE MEMBER GEESMAN: You had a
3 classification then that never changes?

4 MS. GOUGH: No. For instance, in 1997
5 there's a major change from SIC code, standard
6 industrial classification, --

7 ASSOCIATE MEMBER GEESMAN: Right.

8 MS. GOUGH: -- to North American. So, I
9 mean, the type of business --

10 ASSOCIATE MEMBER GEESMAN: Is the --

11 MS. GOUGH: -- it can change.

12 ASSOCIATE MEMBER GEESMAN: Is the
13 utility's still in a position to make that
14 classification accurately without interaction with
15 the ESP or with the customer, itself?

16 MS. GOUGH: Did you say or the customer?
17 Well, the utilities, my understanding is they work
18 with the customer when they request service, they
19 do need to go through the utility one way or the
20 other, since the utility delivers the energy.

21 MR. BROWN: Our primary sensitivity was
22 with the word audit, so --

23 ASSOCIATE MEMBER GEESMAN: Yeah.

24 MR. BROWN: -- we may be giving this
25 more attention than it deserves.

1 MS. HOLMES: Well, I suggested deleting
2 the word audit and just say verify. If that would
3 solve this and let us move on, that might be a
4 good solution.

5 PRESIDING MEMBER PFANNENSTIEL: Let's
6 move on.

7 MS. HOLMES: I believe that was it for
8 section 1303. A number of --

9 MR. KLATT: Excuse me.

10 MS. HOLMES: I'm sorry.

11 MR. KLATT: Sorry, Caryn. Greg Klatt
12 for AREM again. Just a housekeeping detail; this
13 might be addressed in the general regs, but we
14 have a suggestion that in the places where they're
15 specifying dates, you may want to add a clause
16 that says that if that date falls on a weekend,
17 that it's the next Monday or day after the
18 holiday, those standard clauses.

19 MS. HOLMES: We have a general
20 regulation that states that if -- in the section
21 1200 sections of our regulations already.

22 MR. KLATT: Thank you.

23 MS. HOLMES: I believe the next section
24 that people had comments on, and they have a lot
25 of comments on them, is section 1304.

1 Section 1304(a) is asking if there were
2 some minor, I think minor grammatical
3 clarifications in there. And I'm trying to decide
4 if we want to do, I think we should separate out
5 section-by-section.

6 Al, do you want to summarize the changes
7 since you've moved with alacrity to the table
8 here? Would you like to summarize the changes at
9 the first part, section 1304(a)?

10 MR. ALVARADO: Sure. My name's Al
11 Alvarado with the Energy Commission Staff.
12 Spelling is A-l-v-a-r-a-d-o.

13 The sections that I'm responsible for
14 represents mostly the electricity generation and
15 fuel use in 1304. So I actually have only very
16 minor changes, proposed changes.

17 The first change applies to 1304(a)(2)
18 which is the generation of fuel use data.
19 Subsections (a), (b) and (c) relate to data
20 submittals pertaining mostly to fuel use and
21 actual generation. And each of these subsections
22 is broken up into the generator size.

23 The first change that we made is we
24 actually requesting to delete subsection (3) which
25 requests for each generator to provide the

1 generation and actual annual peak demand. We just
2 sort of found that most of this information was
3 not very relevant and there's always problems with
4 these sort of submittals.

5 The only other change that we've made
6 applies to subsection (a) which pertains to the
7 generators that are within the size 1 to 10
8 megawatts. The existing regulations requires
9 these generators to file annual generation of fuel
10 use once a year.

11 What we're asking for now is to provide
12 monthly generation and fuel use reported once a
13 year.

14 ASSOCIATE MEMBER GEESMAN: Can I ask
15 what the rationale for additional data in that
16 sub-10-megawatt category is?

17 MR. ALVARADO: Staff was interested in
18 better understanding the actual monthly generation
19 of fuel use patterns of all the utilities. The
20 sections (b) and (c), which are the generators of
21 about 10 megawatts, are requested to file that
22 information. Periodically we do get questions on,
23 well, what is exactly the generation pattern of
24 fuel use of these individual utilities.

25 So the intent was to get a better

1 snapshot of their performance. And better
2 understand the monthly seasonal patterns of their
3 generation.

4 ASSOCIATE MEMBER GEESMAN: My
5 recollection from the 2005 IEPR was that we had a
6 description in there of cogenerators in
7 particular. Something like 9000 megawatts, 790
8 cogenerators, 90 percent of them above 10
9 megawatts in size of installed capacity.

10 Why -- what's the value of picking up
11 that last increment of 10 percent? What are we
12 really going to do with it? And what difference
13 does it make? And if there is value, when are we
14 going to go after all the photovoltaic systems, as
15 well, because maybe we've got curiosity about what
16 goes on in each of the households with
17 photovoltaic systems installed on their rooftops.

18 MR. ALVARADO: Actually there has been
19 some internal staff discussions about trying to --

20 (Laughter.)

21 ASSOCIATE MEMBER GEESMAN: No doubt.

22 MR. ALVARADO: -- to have better
23 information on all the generators below 1
24 megawatt. But we've decided that that would
25 actually be quite a burdensome data request. And

1 instead would rely on other means if indeed we
2 needed to have a better understanding of those
3 smaller megawatts.

4 I also tried to at least break down the
5 numbers, you know, who are these 1 to 10 megawatt
6 generators. Out of a total of 650-odd filings
7 that we receive individual filings, the generators
8 under 1 to 10 megawatts is 210 filings -- 212
9 actually, filings. So that represents about 30
10 percent of the filings.

11 In terms of megawatts, the 10 megawatts-
12 plus represents about 98 percent of all the
13 generation. And the 1 to 10 megawatts is 2
14 percent.

15 And out of that split about 90 of the
16 filings are actually qualifying facilities and 51
17 are cogenerators. So at least we're trying to get
18 a sense of who we're requesting information for.

19 What do we gain from this? Yes, it's a
20 very small portion out of the total state mix of
21 generation. We were trying to sort of balance out
22 to see if this added information could provide us
23 a little more better understanding about how some
24 of these generators operate. So we're talking
25 about biomass generators, some hydro, and

1 including one solar facility.

2 So the intention really is to gain a
3 better understanding of these small guys, how they
4 operate.

5 ASSOCIATE MEMBER GEESMAN: Is self
6 reporting a reliable source of information from
7 those small generators? Would we be better off,
8 for example, using a survey?

9 DR. JASKE: Commissioner Geesman, the
10 great majority of entities in this size range are
11 selling to someone else, selling to an IOU. And
12 so there is no question that there is the
13 existence of monthly data; it's intrinsic to the
14 financial transactions connected to selling the
15 power.

16 I don't perceive that what we're asking
17 for is any burden at all because we're asking for
18 them to send us, once a year, say 13 line items,
19 production in each of the 12 months and a total
20 for the year, as opposed to one line item.

21 Now, you could view that as being, you
22 know, twelve times as much information, but it's
23 information that they have readily. And the
24 incremental burden of them telling us what they
25 did on a month-by-month basis is just trivial.

1 ASSOCIATE MEMBER GEESMAN: Kind of like
2 itemizing your tax deductions.

3 MR. KERNER: But, by your own argument,
4 the utility knows it, too, so -- Douglas Kerner
5 for IEP. By hypothesis these people are engaged
6 primarily in business with IOUs.

7 DR. JASKE: Right, but to go back to one
8 of the first substantive points we had in this
9 workshop, the whole premise of the regulations is
10 that they are designed in a functional
11 responsibility way, is simply, you know, from the
12 staff's perspective is an appropriate burden for a
13 generator selling into wholesale markets, the
14 bilateral arrangements with other entities, to
15 provide some kind of data to the Energy Commission
16 about what they're doing.

17 We don't view reporting the individual
18 12 months production data that they already have
19 as a burden.

20 PRESIDING MEMBER PFANNENSTIEL: Yes.

21 MR. McKINNEY: Jim McKinney, J-i-m
22 M-c-K-i-n-n-e-y, Energy Commission Environmental
23 Staff. Commissioner Geesman, if I could also
24 respond to your question about the justification
25 for looking at information in the 1 to 10 megawatt

1 range.

2 This was a cross-over request between
3 environmental staff and the electricity office.
4 Our strategy for refining the quality of
5 information we get on generators sought to combine
6 monthly generation information with the emission
7 factors.

8 We know least about emissions on the 1
9 to 10 megawatt category. So by getting the
10 monthly generation from those combined with the
11 emission factors, in our view, provides an
12 efficient and the least burdensome method for
13 better understanding the emissions profiles of
14 that category of generators.

15 ASSOCIATE MEMBER GEESMAN: And that form
16 of self reporting provides a reliable source of
17 data? Let's say I was a regulator and was
18 interested most of all in the accuracy of the
19 information I was basing my decisions on. And
20 let's say I had a research budget of tens of
21 millions of dollars a year. Wouldn't I be better
22 off commissioning a survey to get data for that
23 customer set?

24 MR. McKINNEY: My understanding, you're
25 upping my budget for the next couple years?

1 ASSOCIATE MEMBER GEESMAN: I may be.

2 (Laughter.)

3 MR. McKINNEY: Commissioner, that's a
4 good question. I frankly don't know the answer to
5 that. We sought to come at this from soliciting
6 information that we thought was readily available
7 to generators at least, so --

8 ASSOCIATE MEMBER GEESMAN: Yeah, I'm --

9 MR. McKINNEY: But your question is a
10 fair one.

11 MS. HOLMES: Let me ask another question
12 relative to the discussion we had earlier. Does
13 anybody here representing generators know whether
14 or not generators filed this data somewhere else,
15 and so that you could simply be providing us what
16 you file somewhere else.

17 PRESIDING MEMBER PFANNENSTIEL: Caryn, I
18 would add onto that I think Mike Jaske
19 characterized it as perhaps a trivial additional
20 burden, and I'd sort of like to get a reaction to
21 that.

22 MR. McLAUGHLIN: I have a reaction.
23 Bruce McLaughlin, CMUA. Mr. McKinney mentioned
24 that it would be the least burdensome method to
25 collect it this way. Of course, his burden is on

1 the CEC and the statute says the burden is
2 evaluated according to the data provided.

3 So it is very very important that we
4 would identify if, in fact, there are data
5 collection activities already ongoing. And that
6 would be one of the things we would do in this
7 other workshop that we talked about earlier.

8 And then also we did point out in our
9 comments that there are certain aspects of this
10 data that we just flat out don't have, period.

11 Those are all my comments.

12 PRESIDING MEMBER PFANNENSTIEL: Thank
13 you.

14 MS. HOLMES: I believe another comment
15 with respect to this section, I can't remember who
16 filed it; I did not create a crib sheet for this
17 workshop.

18 Somebody raised the issue about they may
19 not have a fuel composition analysis; that may
20 have been CMUA.

21 MR. McLAUGHLIN: That's correct.

22 MS. HOLMES: And I think there was
23 some -- maybe I'm mis-remembering, I cannot
24 recollect whether there was discussion at the last
25 workshop of adding words along the lines of if

1 available, or words to that effect.

2 But for those who expressed a concern
3 about that, would that address your concern?

4 MR. McLAUGHLIN: Well, I think section
5 1342, and, of course, the statute 25320, always
6 allow us to say we don't necessarily control the
7 information. But positive comments are if, in
8 fact, you want information let's find out where
9 it's already being reported, and maybe it's
10 already out there, as opposed to you asking some
11 convoluted question that we say, ah, can't answer
12 it. And then we both lose, should I say.

13 MS. HOLMES: Well, it occurred to me
14 that there may be people who do, in fact, have
15 fuel composition analyses for regulatory reasons
16 in other facilities of a different size or
17 different technology may not.

18 So I think the intent, at least, of this
19 regulation was to say if you've got it, we'd like
20 to have it.

21 ASSOCIATE MEMBER GEESMAN: Yeah, let me
22 express some concern based on the experience we
23 had in the 2005 cycle where the Committee felt a
24 fairly high level of frustration when the staff
25 would come in to the full Commission and proclaim

1 victory, saying, look, they filled out the forms.
2 Without the concern that the Committee would have
3 liked expressed as to, and what was the quality of
4 the information that they provided.

5 If information is available then I would
6 think that we would be able to seek it out
7 ourselves, as a staff, and obtain it without
8 compelling a disclosure that may or may not yield
9 accurate information.

10 I'd like to see some premise of accuracy
11 and usefulness of the data we're going to get
12 before we rely on our regulatory mechanism to
13 obtain it.

14 DR. TOOKER: Commissioner Geesman, this
15 is Chris Tooker. I'd like to respond to that and
16 a comment you made earlier relating to that prior
17 to this workshop. And that is that the relative
18 benefits and efficiency of collecting emissions
19 factor data versus emissions.

20 Staff believes that the emission
21 factors --

22 MS. HOLMES: Chris, I'm sorry, can we
23 wait -- can we finish this -- I'm sorry --

24 DR. TOOKER: Okay.

25 MS. HOLMES: I just wanted to finish the

1 generation, make sure we're done with the
2 generation before we move on to the
3 environmental --

4 DR. TOOKER: Okay.

5 MS. HOLMES: And what I'm hearing is
6 that hopefully there'll be an identification
7 potentially of whether or not generation and/or
8 fuel use data is filed elsewhere. And a
9 discussion of whether that's something that should
10 be pulled into this process, as well.

11 And then we've also heard Commissioner
12 Geesman express concerns, I think, specifically
13 about requesting items such as fuel composition
14 analyses.

15 Does anybody else have any other
16 comments on the generation and fuel use?

17 MR. SPEAKER: No, I would like to
18 indicate that orientation of regulatory policy
19 that I think has been described, you know, it's
20 just to ask yourselves what you need. And the
21 second question is where can I get it. If it's
22 out there somewhere else, I'll go get it.

23 And then you move through the levels of
24 invasiveness after that. And if that's the
25 direction we're going to head, I think that's

1 exactly what we have been suggesting. So I --

2 MS. SPEAKER: And I guess the way that
3 the current regulations are structured, if the
4 filer identifies for us where that information is,
5 that's the essential piece that helps the staff
6 them identify additional data if we don't know who
7 is filing what, because the filers don't tell us,
8 then it makes it more difficult to do that task.
9 So your assistance in identifying where you file
10 information would certainly be helpful.

11 MS. HOLMES: Right. As I understand the
12 way the current process works, if you file it
13 somewhere else, under the current regs the burden
14 is on you to come to us and say, can we submit
15 this alternative filing. And it goes through this
16 process with the Executive Director.

17 For staff, I think sitting here trying
18 to come up with a new package of regulations it's
19 going to be very very helpful if we know where
20 those other filings are made, and how often, and
21 those kinds of items.

22 But, you know, I asked and I got a bit
23 of a response from Mr. McLaughlin, and I guess
24 we'll pursue this outside of the workshop process,
25 as well, as to where those alternative filings

1 might be made.

2 MS. THOMPSON: Vicki Thompson with San
3 Diego Gas and Electric and SoCalGas. I just
4 wanted to clarify something you said, Ms. Holmes,
5 earlier. Maybe I'm confused, which is quite
6 possible.

7 For example, on section (c) subsection
8 (3) regarding use by fuel type or large power
9 plants, basically, were you saying that staff was
10 considering adding the language that the analysis
11 would be, provide the analysis if it is available?

12 MS. HOLMES: I believe we discussed that
13 at the last workshop. These, we haven't done any
14 drafting since then. We're waiting for today's
15 workshop and Committee guidance to go --

16 MS. THOMPSON: I see.

17 MS. HOLMES: -- further. But there was
18 some discussion about it I think at the last
19 workshop.

20 MS. THOMPSON: Okay, well, we certainly
21 would support that. Thanks.

22 MS. HOLMES: And if there's no other
23 discussion about generation and fuel use, then we
24 can move on to the environmental.

25 MR. BROWN: Just a couple thing. One is

1 the notion of -- Andy Brown from Constellation --
2 the differentiation between fuel consumption for
3 thermal versus generation may be really difficult.
4 I mean there may not be internal meter data on
5 that type of stuff. So you need to figure out to
6 the extent that can just be approximated.

7 And the other issue is what is the need
8 for gas price information. It seems to me that
9 you can just as simply look at some market index
10 for some period of time and that would work as a
11 sufficient proxy. As opposed to individual units
12 paid gas costs.

13 MS. HOLMES: Jairam, was that your
14 recommendation?

15 MR. GOPAL: Probably. I think there was
16 a mix of recommendations that --

17 ASSOCIATE MEMBER GEESMAN: Spell your
18 name, Jairam.

19 MR. GOPAL: Name is Jairam Gopal,
20 J-a-i-r-a-m, as in Mary, and Gopal, G-o-p-, as in
21 Paul, -a-l, with the natural gas unit in the
22 California Energy Commission.

23 There are several sections where the
24 natural gas prices have been requested to be
25 collected in this proceeding. The reason is that

1 the -- prices and other index prices aren't
2 available. But the problem is it's universal to
3 all, and that we are not able to distinguish
4 between regional impacts of natural gas prices.

5 And that seems to be a key indicator on
6 trying to analyze the price and reporting
7 information back to the Legislature and
8 (inaudible), entitles which come under the
9 statutes.

10 MR. KERNER: Douglas Kerner for IEP.
11 Isn't what you've, at the end of the day -- I'm
12 trying to, you know, be solution-oriented here --
13 isn't what you really want to know what the
14 utilities' incremental cost production is?

15 And this isn't getting you anywhere near
16 that. If you knew that you wouldn't need to know
17 anything else, would you?

18 MR. GOPAL: I think there was a time
19 when probably the utilities' incremental costs
20 would have been sufficient. But because there are
21 a variety of merchant power plants who get gas
22 from a variety of sources, the overall mix of gas
23 prices and the way they impact generation becomes
24 a little more important.

25 If we need to count the beans on power

1 generation, the costs involved, and if we need to
2 make any assessment of how much was spent in
3 different market sectors, we certainly need this
4 information.

5 MR. KERNER: Well, they have it all,
6 right?

7 MR. GOPAL: The utility would not have
8 all information.

9 MR. KERNER: On all their procurement?

10 MR. GOPAL: If the utilities have it,
11 and they can tell me that they can provide it,
12 that would be very good.

13 MS. HOLMES: This gets back to our same
14 question about functionality. If there's going to
15 be a requirement having to do with generation then
16 we want the generators to be providing the data.
17 We don't want to be turning to the utilities to
18 collect that.

19 MR. ALVARADO: This is Al Alvarado. I
20 just want to also clarify where the references are
21 for requesting for fuel cost information. There's
22 one subsection (c)(8) already includes the request
23 for monthly fuel costs by fuel type for each
24 electric generator within, let's see, any
25 generators 50 megawatts or greater.

1 Now that really didn't change other than
2 requesting this data be submitted one quarter
3 later than required by the section.

4 The other reference that's new pertains
5 to asking for fuel information, fuel cost
6 information of the cogenerators.

7 So, on one side, you know, we're not
8 asking for anything new, that's already been
9 submitted.

10 MS. HOLMES: And that's for the 10
11 megawatt and above plants, that's not for the 1 to
12 10s, I believe.

13 MR. ALVARADO: Right. Right.

14 MS. HOLMES: So the new price
15 information is for cogeneration facilities 10
16 megawatts and greater.

17 MR. ALVARADO: That's right.

18 MR. KERNER: May I just follow up a
19 point that -- Douglas Kerner for IEP -- Staff
20 Counsel Holmes, you've concluded a fact in an
21 interesting way. I wanted to -- you expressed, I
22 think, you know, a preference for not collecting
23 procurement costs from other cost information from
24 the utilities.

25 But isn't that exactly the source you

1 would want to collect it from, since after, in the
2 category of credibility that was raised earlier.
3 These are the values of the numbers that are going
4 to be used to calculate revenue requirements,
5 customer costs, resource adequacy compliance,
6 renewable portfolio standard compliance.

7 So isn't that exactly the source you
8 would want to rely on for that stuff?

9 MS. HOLMES: Well, I think --

10 MR. KERNER: It's a rhetorical question,
11 if you want to deal with it that way, but I
12 mean, --

13 MS. HOLMES: I'll avoid the rhetorical
14 answer.

15 Is there anything more on generation and
16 fuel use data? Move on to the environmental
17 information, which is in subdivision (3) -- excuse
18 me, subdivision (a)(3).

19 And, Chris, I think you had started to
20 say something about we got some comments about
21 emissions and emission factors.

22 DR. TOOKER: Yes. Again, this is Chris
23 Tooker with the Energy Commission Staff. It's
24 staff's believe that emission factor data is just
25 as accurate and can be used just as effectively in

1 analyses than can be emissions data, itself. And
2 it's easier to manage and less of a burden on
3 generators because staff can use that information
4 along with fuel use, et cetera, to calculate
5 emissions even down to specific plant level
6 analyses to deal with regional or local issues
7 that may be of interest to the Committee.

8 ASSOCIATE MEMBER GEESMAN: So, I'm
9 trying to balance in my mind the difficulty of
10 actually getting emissions data from local air
11 district with the ease of using an emissions
12 factor and attempting to attribute a level of
13 precision to that emissions factor.

14 DR. TOOKER: Well, I can respond by
15 relating to my past experience in managing air
16 quality engineers that when there has been an
17 attempt to get data from air districts, their
18 response typically is, we probably have that data;
19 if you want to come and mine through our files,
20 you're welcome to it. And the data is usually all
21 over the map in terms of its format and quality.

22 So that that would be, I think, a very
23 significant (inaudible) to be able to acquire data
24 in that fashion.

25 I see that Mr. Layton has come to the

1 table. He's an air quality engineer; could
2 perhaps address this in more detail. Matt.

3 MR. McKINNEY: Sorry, Matt. Again, Jim
4 McKinney, CEC Staff. Just by way of introduction,
5 as we get into the environmental subject area
6 here, staff has been doing environmental
7 performance report for six or seven years now.
8 And our initial charge was to use the best
9 available data from environmental and resource
10 agencies.

11 We've attempted to do that. The
12 culmination of our experience is that there are
13 very large data gaps. There's a bit of a
14 hierarchy. Air quality data is the best, but it's
15 still problematic. Water use is quite spotty.
16 And biological resource data is really just hit
17 and miss, and spread throughout the Fish and Game
18 regions, Fish and Wildlife regions.

19 Based on our experience really trying to
20 access and use existing regulatory data we have
21 formulated a proposal that we're now discussing.
22 But that always has been a premise to make the
23 best use of existing information.

24 ASSOCIATE MEMBER GEESMAN: Yeah, I guess
25 I am wary of the implied precision of the emission

1 factor and the misuse which that can be put to if
2 we simply generalized from emission factors across
3 a variety of disparate plants, or disparate
4 technologies. And we tend to make sweeping
5 conclusions that may contradict the conclusions
6 that we would actually derive if we looked at
7 specific air district data for those specific
8 plants.

9 I've seen a lot of this in the
10 cogeneration area; a lot of it associated with
11 both the South Coast and the San Joaquin Air
12 Quality Management Districts. And I guess my
13 hunch is that's where the state's interest would
14 be to try and zero in with as much precision as
15 possible. And I'm apprehensive that a reliance on
16 emission factors may move us away from that
17 objective, not toward it.

18 MR. LAYTON: Matt Layton, L-a-y-t-o-n.
19 Commissioner Geesman, I'm not sure I understand.
20 Are you assuming that we would give an emission
21 factor for certain technology and apply it to all
22 those --

23 ASSOCIATE MEMBER GEESMAN: I'm fearful
24 that there would be a tendency to generalize.
25 I've seen it before.

1 MR. LAYTON: I understand that. If we
2 were to get the data that would provide a specific
3 emission factor for each unit, would that provide
4 the specificity that you would want?

5 ASSOCIATE MEMBER GEESMAN: Would I be
6 better off expending some portion of my research
7 budget which accumulates to tens of millions of
8 dollars a year actually doing that, I think as Mr.
9 McLaughlin characterized it, data strip-mining --
10 interesting term -- on specific air district data.

11 I realize you guys may not have that
12 budget, but certainly Commissioner Pfannenstiel
13 and I, at least nominally, have some
14 responsibility for budgets of that size.

15 We're interested in obtaining the best
16 possible information in areas that are of the
17 greatest concern to state policy. Are we better
18 off treating this as a research project, and
19 attempting to design appropriate research
20 activities aimed at getting that information.

21 MR. LAYTON: Well, I think that the
22 staff put forward this proposal because we do
23 think the air quality implications of these
24 smaller units are most critical.

25 They generally were installed years ago,

1 haven't been upgraded; and are most localized in
2 the sense that the stacks are shorter, the
3 emission controls are less pervasive. They
4 actually do have a bigger air quality impact in
5 our mind. And if you actually go look at the
6 inventories, the cogen generally is about half the
7 emissions inventory of any one district you go
8 look at; cogeneration is half the inventory and
9 the electrical production is the other half of the
10 inventory from those kind of units.

11 As you point out, the megawatts
12 installed of cogeneration is a lot less than the
13 megawatts installed across the entire electricity
14 generation. So the smaller number of units --
15 well, I guess the larger number of units, the
16 smaller megawatts operate more, have a larger
17 impact on air emissions and potentially air
18 quality.

19 So we're very interested in how we
20 arrive at that, whether it's through research or
21 gathering data from the actual owners. I guess it
22 would be up to the Committee.

23 MS. SPEAKER: But then again you're not
24 proposing to actually collect data, you're
25 proposing to develop emission factors. So, --

1 MR. LAYTON: We're asking for emission
2 factors from the owners of the units. The
3 emission factors would be for their unit.

4 MS. SPEAKER: And I'm asking, does that
5 provide more precision than actual metered, or
6 actual monitored emissions.

7 MR. LAYTON: Well, if we were going to
8 get emissions from the operator, they would
9 probably take an emission factor, because they
10 don't have continuous emission monitoring on their
11 unit. So they would be taking their emission
12 factors, multiplying it times their generation or
13 their fuel use and coming up with the emissions
14 and giving those numbers to us.

15 So, we thought the emission factors
16 would be the, I guess the -- strip away the over
17 burden, getting down to the raw data, it would
18 probably be the most useful data to us.

19 ASSOCIATE MEMBER GEESMAN: Okay.

20 MS. McBRIDE: Barbara McBride with
21 Calpine. B-a-r-b-a-r-a M-c-B-r-i-d-e. That is
22 true for like VOC and PM10, SOx -- factors, for
23 NOx and CO. If we had to develop an emission
24 factor for NOx or CO for most of our plants it
25 would be way off from what our actual emissions

1 are.

2 And the issue is, is like during
3 startups and shutdowns our emissions vary
4 significantly than what they do during actual
5 operation.

6 So, you know, there is no real emission
7 factor that we could give people for CO and NOx
8 because it would not be representative of what the
9 plant actual operations is.

10 MR. LAYTON: For the larger units I
11 think that is true.

12 MS. McBRIDE: I mean, yeah, for a
13 smaller cogen units, it's still, I mean the
14 emissions still vary quite significantly.

15 MR. LAYTON: (inaudible) cogeneration
16 unit operates more continuously and therefore
17 doesn't have these wide swings in emissions and --

18 MS. McBRIDE: Well, some of them do,
19 some of them not. Some of them are cycling these
20 days.

21 MR. SPEAKER: You are, however, --
22 proposing to reduce to the level of 1 megawatt the
23 application of the emissions factors, right?

24 MR. LAYTON: Yes, that's the proposal.

25 MR. SPEAKER: (inaudible).

1 MR. SPEAKER: No, I said the emission
2 factors are more useful for the smaller units,
3 because most of them don't have CEMs, continuous
4 emission monitoring systems.

5 PRESIDING MEMBER PFANNENSTIEL: Other
6 points on this?

7 DR. TOOKER: Spell your name, please.

8 MS. TRELEVEN: (inaudible). There we
9 go, thank you. This is just a comment about
10 carbon dioxide that came up as we talked about
11 this.

12 From the FERC forms you essentially do
13 have carbon dioxide factors already; you have heat
14 rates. And the fuel is natural gas.

15 But the other question that was raised
16 is what is your relationship with the Climate
17 Registry? And would all of that data, which is
18 carefully audited, carefully built, be available
19 to the Energy Commission?

20 MR. SPEAKER: I guess -- I don't know
21 the answer to your question. I believe the data
22 is available to us. And I think we have language
23 in there that says the data's available elsewhere.
24 The owner can refer to it, or we can get it from
25 them.

1 MS. TRELEVEN: Thank you.

2 PRESIDING MEMBER PFANNENSTIEL: Useful
3 suggestion.

4 MS. HOLMES: Is there more discussion on
5 the air emissions portion of the environmental
6 data?

7 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
8 I just want to express my continuing disagreement
9 with the scope of this data request. I am
10 confident that it's going to be overly burdensome
11 and costly, and that there are possibly other
12 opportunities for getting this data, which we've
13 already discussed. So I've beaten that to death.
14 Thank you.

15 MS. HOLMES: Thank you.

16 (Laughter.)

17 MR. McKINNEY: Jim McKinney, Energy
18 Commission Staff. I did notice in reading through
19 the comments from the generator community that
20 there were a few, I think, misunderstandings of
21 the request for emission factors. This is a one-
22 time request, not an ongoing annual request. I
23 think there were a few commenters who portrayed it
24 as such. I'd like to correct that intent of the
25 staff proposal.

1 MS. McBRIDE: This is Barbara McBride
2 with Calpine. But our emission factors do change
3 on an annual basis. We actually do source testing
4 annually for most of the pollutants and they do
5 change. So our emissions that we report to other
6 agencies would change on an annual basis, the
7 emission factors that we use.

8 MR. LAYTON: This is Matt Layton. Well,
9 we would hope to get those then so you have --

10 MS. McBRIDE: Okay.

11 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
12 One more comment. I guess bring out the
13 Louisville Slugger. The CEC should really provide
14 the statutory authority that they have to request
15 this scope of data for the IEPR. It seems to go
16 beyond that. I mean, you know, these are
17 repeating my comments that we provided in written
18 form.

19 ASSOCIATE MEMBER GEESMAN: Let me jump
20 in there, Bruce, because I do think these regs are
21 broader than simply for the IEPR. I think the
22 intent of this proceeding is to address data
23 gathering responsibilities of the Commission
24 overall. The IEPR is an important part of that,
25 but it's not the exclusive focus of it.

1 MR. McLAUGHLIN: Okay, Commissioner
2 Geesman. I understood from the title of the
3 rulemaking, plus the authority that you used to
4 initiate the rulemaking, that it was only for the
5 IEPR.

6 MS. LENNON: Maureen Lennon from the
7 California Cogeneration Council. And I think my
8 comment I'm going to make here in the emissions
9 context, but it's more generic, and it may get at
10 some of the things that have been coming up when
11 we started this environmental section.

12 Most of our members were very concerned
13 last year when the forms and instructions came
14 out. And they had some apoplexy about things that
15 they'd never had to deal with before.

16 And then when we saw this come out, you
17 know, last week in a meeting they had a very
18 simple recommendation that I can't say I'd really
19 thought of before, and I thought I'd share it with
20 you here.

21 Each of them is in a different air
22 district, water district, waste control management
23 district. They provide to EPA, ARB, all the
24 state, local, federal agencies that are required
25 under the environmental responsibility statutes

1 for those agencies that have environment as their
2 primary objective and responsibility.

3 They didn't have a problem providing the
4 CEC Staff with copies of every report they filed
5 with every environmental agencies, I mean with
6 some caveats, that's an overstatement. But,
7 rather than having you guys go and figure out
8 what's where as you go to the air district and
9 find things, they're comfortable with sending
10 their air district report that they file to you,
11 copy you on what they file when they file.

12 What was so overwhelming to them was
13 that this, for the Energy Commission, was going to
14 be a new, different set of incremental, additional
15 different format, different timing, just it is a
16 huge burden. They have an environmental staff now
17 that's focused on reporting to all the
18 environmental agencies through all of the media.
19 And they really couldn't understand why the CEC
20 now, with all due respect, needed to come in and
21 get incremental and different and more data.

22 So, I mean I'm not committing to that,
23 per se, but I'm saying, looking at it as an
24 approach, if you start with getting a copy of what
25 the folks are filing somewhere else, you can

1 eliminate your need to go over to the air district
2 and be sent into a black room somewhere.

3 So, it's an idea. But we are concerned
4 and particularly the new incremental things here
5 that are asking for different timing, different --
6 it just doesn't make much sense to have the Energy
7 Commission be suddenly imposing things that the
8 environmentally responsible agencies aren't quite
9 needing or wanting or desiring at this point.

10 PRESIDING MEMBER PFANNENSTIEL: Thank
11 you.

12 MS. HOLMES: Thank you. Are there --
13 those kinds of comments cover all of the
14 environmental information generally. Are there
15 people that have other specific comments? I think
16 we've covered the air. What about water or
17 biology or I think socioeconomics is in there, as
18 well.

19 If there are specific comments that are
20 included in your written comments -- I'm getting
21 the sense that we're going to be hearing the same
22 thing over and over again if we walk through those
23 sections individually.

24 If there's somebody who wants to
25 specifically say something, that's fine. But if

1 it's the same general concept, don't ask us for
2 information that we don't otherwise have or
3 otherwise provide to other agencies. Maybe we can
4 move on.

5 Does anybody have anything? Jim.

6 MR. McKINNEY: Yeah, Jim McKinney, CEC
7 Staff. For the water comments there was another,
8 I think, kind of misunderstanding by some of the
9 generator responses that would actually compel
10 generators to install water meters at plants that
11 did not have them.

12 That was never our intent. The intent
13 of that particular section was for generators to
14 identify the method used to track water use at a
15 given facility. Our assumption is that there's
16 some type of metering there.

17 Some of the respondents are saying that
18 there are no meters there. In that case we would
19 ask for their best professional assessment, or the
20 next best method for estimating water use at a
21 given power plant.

22 MR. WALSH: Bill Walsh for Southern
23 California Edison. B-i-l-l W-a-l-s-h. I hear
24 some of the comments regarding, you know, where
25 metering doesn't exist or something that's just

1 not available, saying how the regs don't enforce,
2 you know, generators to produce this information.

3 But it seems like those need to be
4 indicated within the regulations, themselves,
5 instead of just sort of relying on well, hopefully
6 we're not going to be commanded to install
7 metering where it doesn't already exist.

8 MS. HOLMES: I believe we also received
9 some comments on section 1304(b), but I -- I
10 believe, SDG&E, you had some comments on that
11 section, as did -- or maybe I'm incorrect. Yeah,
12 PG&E did, that's correct. Kathy, do you want
13 to --

14 MS. TRELEVEN: This is the one filing
15 that I actually work on every six months. And
16 there is no single database to get all of the
17 interconnected generators. We go to about 25
18 different staffers and survey them. And then we
19 provide our changes in redline, the old matrix,
20 each six months with changes in redline to the
21 Commission.

22 It's unclear to me why people would want
23 to go to four times a year. This data doesn't
24 change very much except for the summary data that
25 we provide on the net metered facilities.

1 And additionally, we're asked a lot of
2 information about the generators that we're
3 interconnecting. And some of that information
4 seems to us to be more easily gotten from the
5 generators.

6 DR. JASKE: Mike Jaske, CEC Staff. My
7 understanding is that the interconnection
8 requirements for all generators, all the way down
9 to, you know, the little rooftop ones, obligate
10 the utility to obtain a certain amount of
11 information about each and every facility.

12 And this was discussed way back in the
13 context of the distribution generation rulemaking
14 at the PUC and the sort of delegation of
15 responsibility to the Energy Commission to develop
16 interconnection proposals. And sort of tapping
17 into this data that utilities collect and obtain,
18 in large measure, in this very sort of tight
19 fashion, has to do with safety.

20 And so there ought not to be an issue
21 about whether the IOU is the right -- or the
22 distribution utility, let me correct myself, the
23 distribution utility is the correct entity to
24 provide this sort of universe of what's connected.

25 If we ventured, you know, too far in a

1 particular line item about what, you know, they
2 know versus what, you know, only the generator
3 knows, then fine. But the IOU is the primary --
4 excuse me, the distribution utility ought to be,
5 and I think just by common sense, has to be the
6 source of the information about what is connected
7 to the distribution system.

8 PRESIDING MEMBER PFANNENSTIEL: Excuse
9 me. But, Kathy, you said that while PG&E has that
10 information you don't have it in a readily
11 available way, and you need to survey to get it.
12 And you do that every six months.

13 I think it becomes a question of the
14 burdensomeness, is that what your point is?

15 MS. TRELEVEN: Yeah. I think we're just
16 coming from somewhat different perspectives on
17 this. -- when someone interconnects perhaps they
18 do have to tell us and do tell us whether they're
19 operated by diesel or solar; whether they're, you
20 know, a cogenerator or some other form of small
21 power producer.

22 But it is a burden. It's not the sort
23 of thing that we would refuse to comply with. It
24 just is, it's just a little extra work, and
25 surprisingly it is not an easily accessible

1 database that's automated. It's work we do by
2 hand.

3 PRESIDING MEMBER PFANNENSTIEL: Thank
4 you.

5 MS. HOLMES: Do you also want to address
6 why, because I cannot recollect why, there was a
7 decision made to recommend that these reports be
8 quarterly rather than twice a year?

9 (Pause.)

10 MS. HOLMES: If you don't know, that's
11 fine.

12 (Laughter.)

13 MR. ALVARADO: You know, we're all
14 looking around and saying who was the source.

15 MS. HOLMES: My recollection is that it
16 came from the DG people actually, inside the
17 Commission. That's my recollection.

18 MR. ALVARADO: This is Al Alvarado,
19 Energy Commission Staff. Yes, Caryn, I do think
20 it was our distributed generation staff that was
21 interested in this information. They're not
22 present today.

23 MS. TRELEVEN: This is Kathy Treleven.
24 There is a separately filed form on net metering
25 reports that is quarterly, I believe, that we are

1 supposed to file with the CPUC and the CEC.

2 We've actually been looking for the CEC
3 person to file that with since Scott left.

4 (Laughter.)

5 (Parties speaking simultaneously.)

6 MS. TRELEVEN: And if it is the fast-
7 growing net metering, perhaps that would solve the
8 data need to move to quarterly.

9 MS. HOLMES: Certainly worth pursuing,
10 and that's something again we can take up outside
11 of the workshop. Thank you, Kathy.

12 ASSOCIATE MEMBER GEESMAN: I guess I
13 would, not necessarily for today, but I'd also be
14 curious if the staff could do a little bit of
15 inquiry with the other distribution utilities and
16 determine if they have a similar problem of not
17 being able to access automated data such as PG&E
18 is experiencing.

19 I don't know if the problem is in what
20 we're requesting, or may be a problem isolated to
21 PG&E.

22 MR. SPEAKER: I will work with the staff
23 that receive this information, because I do
24 believe that it pretty much is a paper filing, and
25 it's provided in various forms. So we can double-

1 check on that.

2 MS. JONES: This is Melissa Jones. I
3 guess the other question I would ask is the
4 question about is there a different way to go
5 about getting the information. Our surveys may be
6 inappropriate method versus actual data
7 collection. So I just want you to think about
8 that.

9 MR. KERNER: I would thank you for that
10 comment. Doug Kerner for IEP. I think, moreover,
11 that it is incumbent upon the staff to come
12 forward with, you know, that kind of affirmative,
13 you know, showing as they go down -- no one
14 wants -- everybody's talking about the Venn
15 diagram; nobody actually wants to do it
16 apparently, which I certainly understand, since I
17 don't know what one is, but -- I think that would
18 be entirely appropriate to let's try to figure
19 out, again, you know, what do we need; where can
20 we get it; and how can we get it. And maybe get
21 to the bottom of the page, you're asking
22 businesses, including the utilities, for that
23 matter, to expend money, time and resources -- be
24 based on this environmental stuff.

25 The hiring people, you know, to do work

1 that isn't previously even done, maybe that should
2 be way down at the bottom of the page, it seems to
3 me. I don't think they understand the material
4 yet well enough and where all that falls out.

5 MR. BROWN: We may have jumped over one
6 section. Andy Brown for Constellation. This is
7 the new section related to socioeconomic
8 information. That section caused a lot of
9 consternation. It's incredibly sensitive
10 information in the competitive context.

11 And the way the section reads is unclear
12 the degree of detail that is contemplated. And
13 also, I think when we look at the statute calling
14 for this type of analysis, it seems like it may be
15 something that's much more general. And it may be
16 the type of thing that can be done without asking
17 the individual companies to provide this for
18 individual power plants.

19 MR. MCKINNEY: Jim McKinney, CEC Staff.
20 This proposal for standardizing information
21 collection is the bare-bones interpretation of the
22 existing statute 1389 where we are asked to
23 provide information socioeconomic benefits from
24 power generation in our report back to the
25 Legislature.

1 The way we handled this in the 2005
2 forms and instructions was that all of it was
3 aggregated up. The cogenerator community,
4 especially, had concerns about confidentiality, I
5 believe in following our process that all of those
6 requests were granted.

7 So there was no desire on staff's part
8 of divulge proprietary sensitive information. The
9 intent is to aggregate it up so that we can create
10 in more general county levels, sector level
11 descriptions of the benefits from power plants in
12 different parts of the state.

13 MR. BROWN: And that description may go
14 to two things. One, the notion of having the
15 section be covered by automatic -- well,
16 confidentiality issues to the extent that this
17 information would be covered by that.

18 And also the extent of the detail that
19 might be requested.

20 MR. McKINNEY: Staff would refer to
21 Committee on that.

22 MR. BROWN: And, again, I guess looking
23 at the section it seemed to us that the report was
24 more asking about changes in the distribution of
25 socioeconomic impacts from before the existence of

1 the generator to the existence of a generator, and
2 perhaps whether or not one goes away and retires.

3 And I'm looking at 25303(b)(2).

4 MR. MCKINNEY: I'm sorry, is there a
5 question there?

6 MR. BROWN: It's simply going to the
7 nature of what the statute is calling for, and the
8 degree of detail that you're requesting here in
9 the regs.

10 MR. MCKINNEY: Admittedly, the language
11 in the staff sheet is -- there's not a lot of
12 verbiage there, and my understanding is it's a
13 description of the socioeconomic benefits and
14 drawbacks and the distribution throughout the
15 state. That's what I recall. I don't have it
16 right in front of me.

17 And, again, so the key words we've
18 identified here; so employment, payroll, taxes,
19 fees, transfer payments, that's kind of the
20 building blocks for supplying that basic
21 information about economic benefits.

22 And I guess, as you're saying, if the
23 plant retires, you know, is there going to be
24 reduction there.

25 MS. JONES: Let me ask you, staff, --

1 this is Melissa Jones -- whether we have looked at
2 whether this data is provided by power plant
3 generators to other agencies?

4 MR. MCKINNEY: And this is Jim
5 McKinney, again. Getting a little beyond my
6 expertise and subject areas. I think some of it
7 is available through the Board of Equalization.
8 But others, I frankly am not the expert, technical
9 expert on this. So I can't answer your question
10 at this time.

11 MS. JONES: Thank you.

12 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
13 I think in the case of some of our members who
14 might own multiple power plants, they mentioned
15 that they didn't break it down to that particular
16 power plant, that staff data was sent to whatever
17 department was aggregated to the utility.

18 MS. HOLMES: Does that conclude all of
19 the comments on section 1304? Yes.

20 MS. TRELEVEN: Caryn, this is Kathy
21 Treleven, PG&E. I have one more comment on the
22 socioeconomic data. And I apologize if it
23 broadens the discussion too widely.

24 Jim mentioned, I think, that he'd be
25 willing to aggregate some of that data to protect

1 its confidentiality. And we appreciate when the
2 Energy Commission has done this in reports and
3 all.

4 Would that protection extend to
5 protection under a Public Records Act for the
6 information? Or is that a separate process? And
7 if so, is it the long application process that you
8 outlined?

9 MS. HOLMES: I'm not sure I understand
10 your question. In some sections of our existing
11 confidentiality regulations we have levels of
12 aggregation that we identify that are presumed to
13 be, to protect the confidentiality of the
14 underlying data.

15 Are you suggesting that we add to those
16 identification of aggregation levels something for
17 this section? Or am I not understanding your
18 question?

19 MS. TRELEVEN: Well, I have a very broad
20 question, but let me try to keep it narrowed to
21 the socioeconomic data.

22 If we were to provide data about, say,
23 the employees in our power plants, and I don't
24 know that we have any confidentiality protection
25 desires in that area, but if we were to provide it

1 and Jim and other analysts were to assure us that
2 this would only be published in, say, aggregated
3 ways.

4 Would that be adequate to meet all of
5 our concerns? Or would that only be an assurance
6 that covered the publication of the data and not
7 the desires, should there be some, of some other
8 party to access that data and to ask under a
9 Public Records Act application for that data?

10 MR. McKINNEY: Caryn, if I can --

11 MS. HOLMES: Well, I think this is a
12 legal question, so I think I'd rather actually --
13 I mean you can, if you want, talk about the data.

14 MR. McKINNEY: I have no legal answer to
15 this, but I think the question is one that has
16 come up previously, which is how far does
17 confidentiality extend to the data sets that we
18 manage inhouse. Are those protected by the
19 confidentiality agreement. I'm just trying to
20 clarify the question.

21 MS. HOLMES: Right. And the way, as
22 those of you who went through this process last
23 year are aware, there can be two phases to
24 confidentiality, there can be one.

25 The first phase typically happens when

1 somebody, for example such as PG&E, files a
2 request for confidentiality. And let's suppose
3 that you filed a request for confidentiality and
4 you said the underlying socio data is -- the
5 employee data is confidential, but we're okay if
6 it's aggregated to such-and-such a level.

7 Then the Executive Director agrees and
8 says, that's fine. And so you get a determination
9 that says the underlying data is confidential, but
10 we can publish it at such-and-such a level of
11 aggregation.

12 If somebody subsequently comes in and
13 filed a request, a Public Records Act request, for
14 the underlying confidential data, the Commission,
15 itself, will -- the Executive Director -- excuse
16 me, the Chief Counsel can review the request, and
17 it can also be appealed to the full Commission.

18 The critical distinction that people who
19 are involved in the litigation last year are aware
20 of, is that the Executive Director applies a lower
21 standard. In other words, the utility or the
22 filer has less of a burden to establish
23 confidentiality at the Executive Director level.

24 Once the issue goes to the full
25 Commission, the full Commission is required by the

1 Public Records Act to apply a higher standard.

2 Kathy, does that answer your question?

3 MS. TRELEVEN: It answers most of my
4 question. One additional part is if Jim McKinney
5 wants to assure me upfront that he'll hold the
6 level of data to an aggregation --

7 MS. THOMPSON: -- something here, too,
8 because that's a very good question. I don't
9 think he can give you any such assurance. This is
10 Vicki Thompson from Edison.

11 (Laughter.)

12 MS. THOMPSON: -- I've got -- here, but
13 I want to go over there.

14 MS. HOLMES: We know who you are.

15 MS. THOMPSON: SoCalGas. There's no way
16 to assure PG&E, SCE, anybody that they can
17 maintain the confidentiality unfortunately,
18 because as much as they'd want to, because of the
19 statute that adopted the Public Records Act.

20 It's a statutory requirement that this
21 Commission allows people to come in from the
22 outside and make their best case of why they need
23 certain pieces of information. And under that
24 statute there's a presumption that the agency will
25 release the data to the public.

1 So it's a special hurdle for people who
2 want to keep that data confidential to do so. And
3 so no matter what staff wants to do, this
4 Commission really can't adequately -- I shouldn't
5 say adequately, but cannot completely guarantee
6 that information that we provide the Commission or
7 Commission Staff will be protected in the long
8 run.

9 MS. HOLMES: Right. The whole reason
10 that we adopted many many years ago this sort of
11 lower standard with the Executive Director is
12 because as a practical matter we very very very
13 rarely get Public Records Act requests for
14 information that's confidential, or an entity
15 might want to keep confidential.

16 So, we said, it's not necessary for you
17 guys to go through this, you know, to meet this
18 much higher burden until it's absolutely
19 necessary. So the regulations establish a lower
20 burden when you come in with your initial filing
21 and the Executive Director grants the request for
22 confidentiality if you make what's called a
23 reasonable claim for confidentiality.

24 It's only if somebody comes in a files a
25 Public Records Act request for that underlying

1 data that the Chief Counsel, and then presumably
2 the full Commission would hear it, and then would
3 apply that higher standard.

4 And as a practical matter, quite
5 frankly, I'm not aware that that has ever
6 happened. But that is why we established that
7 two-tier system because it simply seemed to be
8 somewhat burdensome to ask you to make the level
9 of case that you would make in a court, for
10 example, every time you come in and you are filing
11 data for purposes of these regulations.

12 DR. JASKE: Well, it's important to add
13 to what Ms. Holmes said, that the Commission has
14 previously recognized that certain kinds of data
15 are confidential. They're written into the
16 confidentiality regulations directly. No one has
17 to make a filing to go through the process of
18 ascertaining whether or not it is confidential.
19 It's the regulations define it to be confidential.

20 And in some instances there are
21 prescribed means by which data that are designated
22 to be confidential can be released in aggregated
23 form. So, one option --

24 MS. SPEAKER: Yeah, I --

25 DR. JASKE: Just a minute, please. One

1 option, you know, for this kind of data that Ms.
2 Treleven has posed to us is for it to be, you
3 know, included in the regulation in that manner.
4 Something, you know, that we understand to be very
5 sensitive; it's designated to be confidential.
6 And since there's a necessity that certain aspects
7 of it be publicly available, certain prescribed
8 aggregations are, in effect, deemed to be
9 appropriately release-able.

10 And the more the original data or
11 aggregations more finely detailed are simply not
12 available.

13 MS. THOMPSON: Regardless of what's in
14 the regulations -- Vicki Thompson, again -- your
15 regulations cannot trump the Public Records Act
16 statute, I don't believe.

17 And so, again, it would be, if we're
18 really trying to protect, once and for all,
19 information that's confidential, customer
20 information, for example, the best thing to do
21 would be to provide it to staff in the aggregated
22 fashion.

23 That way you wouldn't be subject to, you
24 know, requests from outside and be forced into the
25 position of turning over confidential data that

1 you really don't want to turn over.

2 So, that's just a thought.

3 MS. HOLMES: Right. So to the extent
4 that we don't need the disaggregated underlying
5 data, you are absolutely correct that the safest
6 way to provide it is to give it to us in
7 aggregated form. If that's something that we can
8 use, that's the best way to go. It saves us the
9 fuss and the hassle of potential Public Records
10 Act requests, and it protects the privacy interest
11 of your customers that you're interested in.

12 MR. BROWN: There is also an opportunity
13 under 25322 -- Andy Brown for Constellation --
14 section 25322(a)(2) with respect to these data
15 regulations to add a provision in the regulations
16 that would provide for the confidentiality of
17 information.

18 And in our comments we suggest that
19 specifically with reference to the socioeconomic
20 data that that be developed and applied.

21 MS. THOMPSON: How does that, though,
22 handle the ultimate request under the Public
23 Records Act? I still think it's vulnerable.

24 MR. BROWN: I suppose potentially it is.
25 One could ask whether or not the Legislature, when

1 it gave authority to the Commission to add
2 regulations that provided for confidentiality in
3 certain cases, the assumption must be made it was
4 cognizant of the existence of the Public Records
5 Act. And so was providing authority in that
6 respect.

7 MS. THOMPSON: I wouldn't want to take
8 that to the bank, but you may be right --

9 MR. BROWN: Well, yeah --

10 DR. TOOKER: Would you please identify
11 yourself?

12 MS. THOMPSON: Vicki Thompson.

13 MR. BROWN: -- at that point I'm sure
14 that there would be lots of legal briefing on that
15 issue.

16 MS. HOLMES: And I suspect that when we
17 get to confidentiality the question of whether we
18 want to be adding to the categories of
19 automatically confidential data will come up. And
20 it may be one of the factors that the Committee
21 wishes to consider when they decide how to proceed
22 with this rulemaking and whether to keep all of
23 the issues together or to separate them out.

24 MS. LENNON: I just had one quick --
25 Maureen Lennon, California Cogeneration Council.

1 I just have one quick clarifying question on this.
2 When we read the socioeconomic information I think
3 we were one of the parties that was concerned last
4 time around, and we did submit our data in to you
5 in an aggregated fashion, I recall, which solved
6 that problem.

7 But is the last sentence for
8 cogenerators in lieu of the first half of the
9 paragraph? That is how we've read it. That's
10 what we were intending to do.

11 Okay, so in other words, the first half
12 of the paragraph is for non-cogenerators, and the
13 last sentence is for cogenerators.

14 PRESIDING MEMBER PFANNENSTIEL: You mean
15 rather than in addition to?

16 MS. LENNON: Exactly.

17 MS. HOLMES: Right. My understanding
18 was that for cogenerators we simply wanted the
19 information at the beginning of subdivision (d)
20 only related to the production of electricity.

21 MS. LENNON: Right, because obviously
22 you don't want the entire plant of Procter and
23 Gamble in Oxnard, you just want what's related to
24 the electricity generation, to the cogen. Okay.
25 Thanks.

1 PRESIDING MEMBER PFANNENSTIEL: Caryn,
2 are we moving forward --

3 MS. HOLMES: We're slowly moving
4 forward. I don't believe we received any comments
5 on section 1305, which is control area operator
6 reports. And unless I'm mistaken, we can move on.

7 Section 1306, and we had comments from
8 CMUA, PG&E, City of Rancho Cucamonga, and SDG&E
9 and SoCalGas. This has to do with providing
10 electric rate information and providing quarterly
11 data.

12 Does somebody who -- you didn't even
13 file comments, Greg, but it sounds as though
14 you've got something to say about it.

15 MR. KLATT: Greg Klatt for AREM. I
16 think we may have addressed it in our opening
17 comments, maybe not. I believe we did actually.

18 The big issue for us with regard to 1306
19 is whether or not the data is actually needed from
20 ESPs on such a granular level. This is almost MRI
21 level of detail. And I know that the ESPs
22 currently do submit this data.

23 But there's two issues, burdensomeness
24 and confidentiality. And, you know, if the staff
25 does not really need the data at this level of

1 disaggregation, then we could perhaps get around
2 both of those issues by submitting it at a higher
3 level of aggregation.

4 MS. HOLMES: Well, perhaps this is an
5 appropriate time to ask the staff that worked with
6 this data whether this is one of these areas that
7 Dr. Jaske was talking about earlier where you may
8 want to apply a general requirement to a class of
9 entities, but you may actually have -- the
10 specific requirements may be different depending
11 upon who they are. I don't know the answer to
12 that question because I'm not an expert on UDC
13 reports and customer classification reports.
14 Mike, do you have --

15 DR. JASKE: Well, Ms. Holmes -- Mike
16 Jaske, CEC Staff. Ms. Holmes was precisely
17 correct. 1306(a) uses the word utility, and so
18 it's expected that all utilities have some degree
19 of tariff rates. And so it's appropriate for them
20 to report this historic data in that fashion.

21 In contrast, 1306(b) is written
22 specifically to other LSEs. And there the price
23 information, rate information is, in fact, written
24 in the context of major customer sectors, so we're
25 not asking for the same level of detail.

1 And major customer sector is precisely
2 what these very same entities report to EIA and
3 the EIA, in fact, publishes on a lag basis -- we
4 are, I think this is the illustration of my point
5 from earlier today, that we're attempting to
6 customize these. To recognize the sort of
7 regulatory oversight that different sets of LSEs
8 are exposed to. And tune our data collection
9 appropriately.

10 MS. HOLMES: And part of the difficulty
11 that I see as this is currently worded is that
12 electric utilities also, if you look at the
13 definition of electric utility, also can include
14 generators. So that's why we may need to do some
15 refinement.

16 But with that caveat, does that address
17 some of your concerns, Greg?

18 MR. KERNER: Thank you. I certainly
19 understand that staff has made an effort to break
20 it out here by different types of LSEs, and that's
21 very much appreciated, especially with regard to
22 the pricing information versus tariff information.

23 I guess our question is would it be
24 adequate for staff to have the level -- the data
25 submitted, you know, -- number of customers,

1 sales, and this price estimates, could that be
2 done by major customer sector? All of that. And
3 by service territory? Would that be adequate for
4 staff's purposes with respect to ESPs?

5 And the reason we raise this issue is
6 because ESPs, you know, only account for 10, 11
7 percent of statewide load. And breaking it down
8 to the country level just seems a bit of over-
9 kill.

10 And there also could be circumstances
11 where the county level data reveals customer-
12 specific information. I know staff is more than
13 willing to deal with that when it comes up, but
14 that's just something else I wanted to raise.

15 The main question is, if actually
16 county-level data is needed, or if we could just
17 provide service territory level data and if that
18 would be adequate.

19 DR. JASKE: Well, I think the general
20 reaction staff has had to this comment is that
21 broad groupings of customers by service area is
22 too aggregated. We clearly desire to have data
23 classified something along the lines of
24 industries. And in the commercial and industrial
25 sectors, the prominence of ESPs is much larger

1 than average 10 percent of all electricity
2 consumption.

3 So it's really quite important that we
4 have it classified by industry and commercial
5 business activity type. And I think we are
6 prepared to discuss, you know, the need for county
7 -- some groupings of counties, perhaps, where
8 they're small counties. PG&E, once upon a time,
9 had a concept of super-counties, which was
10 aggregation of small counties so as to not
11 encounter the kind of geographic attenuation that
12 Mr. Klatt refers to.

13 ASSOCIATE MEMBER GEESMAN: What do we
14 use the sub-service territory aggregation for?

15 DR. JASKE: It has to do particularly in
16 the commercial area with climate zones, and the
17 different weather, and therefore impacts on
18 buildings and where load is located. Particularly
19 for commercial sector.

20 And we are, as you know, Commissioner
21 Geesman, attempting to move in the direction of
22 lower geographic -- or geographic disaggregation
23 for purposes of linking up to transmission
24 planning.

25 So, going all the way to individual

1 counties for all LSEs may not be necessary, but
2 just the service areas is insufficient.

3 ASSOCIATE MEMBER GEESMAN: Well,
4 certainly disaggregation of the demand forecast
5 would be consistent with the direction
6 Commissioner Boyd and I provided the staff in, I
7 think, January 2003. So I'm happy to hear that
8 you are moving in that direction.

9 On the other hand, it would seem that
10 there are some way stations along the road,
11 transmission planning areas for one, perhaps the
12 geographic local reliability areas that the ISO
13 uses, or that the CPUC is attempting to use in
14 their local capacity requirements determinations,
15 probably several others.

16 Climate zones is certainly something
17 that this Commission places a great deal of weight
18 on in our standards development. But all of those
19 are substantially larger than single counties.

20 DR. JASKE: Yes. And as I indicated,
21 we're prepared to at least consider whether all 58
22 counties is appropriate.

23 I must say, though, that we have to, in
24 this area, confine ourselves to things that we,
25 for some realistic transition period, are in the,

1 what we call, master files of the various LSEs.

2 And talking about shifting to other
3 variables that aren't in the master files is just
4 simply not feasible. So, geographic locators
5 identified to service address, billing address,
6 zip codes, counties, those are things that we know
7 to be in master files. And all these electricity
8 industry planning areas, the transmission and
9 distribution planning does, are less clearly in
10 everyone's master files.

11 So there's limitations on how far we can
12 depart from the source body of variables that we
13 know exist.

14 ASSOCIATE MEMBER GEESMAN: Am I correct
15 in my recollection that for the 2005 cycle we made
16 ourselves content, at least with respect to the
17 ESP data with service territory aggregation?

18 DR. JASKE: For load forecasts we did -
19 well, all the load forecasting was at the level of
20 service area. Here we're talking about the
21 historic QFER data. Quite a bit more granular.

22 MS. JONES: This is Melissa Jones. Am I
23 right in characterizing the customer
24 classification as something that the staff used
25 pretty important to actually doing the load

1 forecast, important inputs in the load forecasting
2 model?

3 DR. JASKE: Yes. It's the essential
4 link to all of the economic activity data out
5 there. Everything, best essence of the former
6 standard industrial code, or the current NAICS
7 code is all of the economic data of the nation,
8 and North America now, are classified that way.
9 And so particularly for longer term forecasts,
10 it's the linkage between consumption and economic
11 activity classified according to that mapping is
12 the essence of how you do that. That's less
13 important for, you know, real short-run type
14 forecasts.

15 But knowing how different kinds of
16 industries are waxing or waning is critical.

17 MR. BROWN: Andy Brown for
18 Constellation. In our comments we had three lines
19 discussing this section. I guess two major
20 points.

21 One, again, I think this potentially is
22 an area for the upfront confidentiality treatment.
23 And so I'll just earmark it there.

24 The other is along the lines of what
25 Commissioner Geesman was suggesting, particularly

1 as we move to locational RAR. The information
2 that is in the electric sales would be information
3 that's provided to the CEC as part of the RAR
4 filings, is my understanding.

5 And so you're now asking essentially for
6 a recast, a potential recasting of that
7 information; although it may be adjusted when we
8 get down to the implementation of the localized
9 RAR.

10 The second issue has to do with the
11 commodity price estimates. And the question there
12 would be whether or not a range, as opposed to a
13 single point, would be permissible. And, again,
14 we're assuming here that that would be aggregated
15 up because that is highly commercially sensitive,
16 both from competitors as well as when we try and
17 negotiate individual contracts with customers.
18 Thank you.

19 PRESIDING MEMBER PFANNENSTIEL: Thank
20 you.

21 MS. HOLMES: We haven't had a break
22 since 9:30 this morning. I don't know whether you
23 want to take a short break or whether you want to
24 provide people with an opportunity for a lunch
25 break.

1 PRESIDING MEMBER PFANNENSTIEL: Lunch
2 break?

3 MS. HOLMES: People have traveled since
4 early this morning.

5 PRESIDING MEMBER PFANNENSTIEL: What I
6 was -- yes, we will have a lunch break. We
7 definitely don't look like we're going to get
8 finished in anything that remotely approximates
9 morning.

10 I was wondering whether we could get
11 finished with this section, but I'm looking for a
12 stopping point.

13 DR. JASKE: A traditional stopping point
14 is the delineation between QFER and CFF.

15 PRESIDING MEMBER PFANNENSTIEL: Right,
16 but it looked like that was -- I was hoping to
17 actually get through the QFER this morning. And
18 I'm not sure how much --

19 MS. HOLMES: I don't know how much more
20 people have on 1306. There were a few, I think,
21 minor comments on 1308.

22 PRESIDING MEMBER PFANNENSTIEL: Well, it
23 would be excellent if we could spend another few
24 minutes; try to get through the QFER, keeping that
25 as our goal.

1 And so that then when we got into the
2 data collection we could focus on that. So maybe
3 with that incentive, --

4 (Laughter.)

5 DR. JASKE: Mike Jaske, CEC Staff. In
6 response to the point that Mr. Brown made, the
7 confidentiality regs in 2505 already provide for
8 automatic confidentiality of consumption data and
9 average price data.

10 It may not be worded in precisely the
11 manner that Constellation is looking for, but I
12 think we have already, you know, accepted the
13 notion that extremely detailed data from whether -
14 - all classes of load-serving entities should be
15 protected. Because you get into individual
16 customer privacy issues, and pricing issues.

17 And so there is certainly a framework to
18 address the concerns that Constellation has.

19 PRESIDING MEMBER PFANNENSTIEL: Okay,
20 Caryn, what more do we have on 1306?

21 MR. VONDER: Just one comment from
22 SDG&E. Tim Vonder. With regard to 1306 here,
23 again, you know, it is a QFER effort here that is
24 in this section. So we're collecting historical
25 data.

1 And our concerns, I think, can be taken
2 care of, SDG&E's concerns can be taken care of
3 when we address that functionality issue. Because
4 I think our concerns or confusion in reading these
5 proposed changes is that does it relate to
6 utilities or does it relate to ESPs and utilities,
7 also; does it relate to bundled customers, or
8 including direct access customers.

9 I think the concerns that we outline
10 here would probably be addressed if, when you
11 rewrite these regulations, if you make specific
12 what it is exactly that you are requesting from
13 utility customers, versus ESPs and so forth.

14 So I think that'll be straightened out.
15 And, in addition, we also have -- we always have
16 concerns regarding confidentiality. And, you
17 know, we're aware that the regulations do
18 automatically protect historical data that's
19 provided through QFER.

20 And that took a lot of work, you know,
21 just to get that regulation put in in the last
22 '99/2000 process. And, you know, we were quite
23 pleased that that was put in there.

24 But since then, you know, Vicki Thompson
25 here, SDG&E, or is it SCE --

1 (Laughter.)

2 MR. VONDER: Anyway, she did bring up a
3 very very good point that when we do provide this
4 information to the CEC in great detail by NAICS
5 code, or SIC code in four-digit level, we are, in
6 the end, opening ourselves up to a great deal of
7 risk of that information being asked for under the
8 Public Records Act, and being given.

9 So, it's nice that the regulations
10 provide us confidential treatment automatically,
11 but it's risky providing it.

12 So if there's a way that you can ask for
13 it at a more aggregated level that would, you
14 know, kind of reduce that risk. Because you can't
15 give out something you don't have.

16 It would make it, you know, less risky
17 for us and maybe easier for you.

18 MS. HOLMES: Just a quick comment with
19 respect to the (inaudible). -- that kind of
20 information needs to be released. I think there
21 are other areas involved where there is more
22 discretion (inaudible) but specifically with
23 respect to customer (inaudible) my belief is that
24 the risk of disclosure (inaudible).

25 MR. VONDER: Or in instances where a

1 small group of customers taken as a group, you
2 know, a small number of customers taken as a group
3 can reveal the same amount of information as if
4 you have the individual customers.

5 So, you know, triangulation in
6 aggregating this information is very important.
7 So, you know, might consider aggregating it to
8 certain levels before it's given to the CEC. As
9 opposed to aggregating it before it's released.

10 MR. KLATT: Greg Klatt for AREM. I had
11 a related question, and that had to do with the
12 difference between the sales data is to be broken
13 out by customer classification code, and then the
14 price estimates, this is 1306(b) -- price
15 estimates broken down by major customer sectors.
16 Is that -- I understood Dr. Jaske to say that that
17 was intentional, that staff wanted to have --
18 okay.

19 Maybe there's somewhere in between those
20 two levels that --

21 MS. HOLMES: I think we said we would be
22 talking about whether we could -- what level --

23 MR. KLATT: Thank you.

24 MS. HOLMES: Are there any more comments
25 on 1306?

1 MR. KLATT: Just a typographical in
2 terms of 1306 -- sorry, Greg Klatt, again, for
3 AREM -- 1306(b)(1)(C). I think the site there,
4 the (a)(1)(A) and (a)(1)(B) should be --

5 MS. HOLMES: Should be B.

6 MR. KLATT: B. And then also back in
7 the confidentiality reg that refers to automatic
8 designation, my notes show that it just says A,
9 (a)(1)(A) and (a)(1)(B). Maybe --

10 MS. HOLMES: Oh, I went down further
11 into the regulation instead of the specific
12 section that talks about which categories. I can
13 check that again.

14 MR. KLATT: Thank you.

15 MS. HOLMES: Any more comments on
16 section 1306? I don't believe we received
17 comments on 1307. If somebody has them
18 (inaudible).

19 And then my notes indicate that we had a
20 comment from PG&E and from SDG&E and SoCalGas on
21 1308, which is quarterly gas (inaudible). I can't
22 recollect off the top of my head what --

23 MS. THOMPSON: Well, I think -- Vicki
24 Thompson from San Diego Gas and Electric and
25 SoCalGas. I think ours were clarification

1 questions rather than comments. Actually, Tim, do
2 you want to --

3 MR. VONDER: 1308?

4 MS. THOMPSON: Yeah. Quarterly
5 reporting requirements.

6 MR. VONDER: Yeah, the questions, our
7 confusion is stated right there. It's just over
8 terms. You know, I don't know if I need to read
9 them, but, you know, do sales mean not transport
10 only, and does transport too mean transport only
11 as in a rate class? So, it's --

12 MS. HOLMES: Jairam, do you want to
13 summarize your response to those comments that
14 they made?

15 MR. GOPAL: This is Jairam Gopal with
16 California Energy Commission. Actually, Andrea
17 has made responses to SoCalGas and SDG&E's
18 questions. Let me see if I can provide it; she's
19 a little busy.

20 MS. HOLMES: I designated the wrong
21 person.

22 MR. GOPAL: 1308(c) Non-cogeneration
23 power plants are not required to report under
24 section 1308. These sections require gas
25 circulating to report (inaudible) to customers

1 that are not cogeneration customers.

2 And then again on the question of does
3 the phrase sales too mean nontransfer only. The
4 response is sales too means not transported
5 (inaudible) sales.

6 And the next question about phrase and
7 transport too means transport only. And the
8 response is transport too means transport only.

9 MS. THOMPSON: So the answer is yes?

10 MR. GOPAL: Yes.

11 (Laughter.)

12 MS. THOMPSON: Okay, and the answer to
13 does the phrase sales too mean not transport, is
14 that yes?

15 MR. GOPAL: That is a yes.

16 MS. THOMPSON: Okay.

17 MR. VONDER: Okay.

18 MS. THOMPSON: And if I could offer one
19 more. Do the quarterly reporting requirements
20 include data from non-cogeneration power plants
21 only?

22 MR. GOPAL: No.

23 MS. GOUGH: Do you mean for -- because
24 we're not getting data from cogeneration plants.
25 Do you mean for cogeneration plants? This is

1 Andrea Gough here.

2 MR. SPEAKER: So you're interested there
3 in just non-cogeneration from --

4 MS. GOUGH: Gas, gas delivered --

5 MR. SPEAKER: Being reported by the
6 utility, it's non-cogeneration only?

7 MS. GOUGH: Correct, gas delivered to
8 customers that is non cogeneration.

9 MR. SPEAKER: Non-cogeneration.

10 MR. GOPAL: Thank you so much.

11 MS. SPEAKER: You're welcome.

12 MR. GOPAL: The other question on -- may
13 I proceed?

14 MS. HOLMES: Yes.

15 MR. GOPAL: Okay, this is again Jairam
16 Gopal with the Energy Commission. The other
17 question we have on 1308(c) was from PG&E. And
18 the question had to do with the aggregation of
19 costs that are provided. And the question was
20 whether an aggregated commodity and regulatory and
21 other related utility costs should be provided.

22 The response is that I believe we at the
23 Commission will need the commodity costs and other
24 costs separated out. That's essentially in order
25 to make sure that we have a proper comparison of

1 how different market sectors and consumer classes
2 are impacted.

3 This is a question (inaudible) not just
4 in the IEPR, but also in the general responses to
5 the Legislature and Governor's Office. And hence
6 the request to make sure we separate out commodity
7 costs and other regulatory costs.

8 If the regulatory costs are combined
9 into one single number, I think would be
10 acceptable.

11 MS. TRELEVEN: I think this may again be
12 the kind of thing that we'll understand better
13 once we see the forms and instructions. But there
14 was a way one might be interpreting that each of
15 the bills for each of the customer groups, you
16 know, rather than providing rate information at
17 great detail, you wanted bill information at great
18 detail for aggregated customer groups enough, it
19 looked a little unwieldy to us.

20 MR. GOPAL: We probably can discuss
21 further on that issue offline.

22 MS. TRELEVEN: We can talk?

23 MR. GOPAL: Yes.

24 MS. TRELEVEN: Thanks. Kathy Treleven,
25 PG&E.

1 MS. HOLMES: Is that it for 1308? And I
2 don't believe we had anything for 1309 or 1310.
3 1311 we did have a request from municipal
4 utilities to eliminate the requirement that they
5 use the total resource cost test.

6 MR. McLAUGHLIN: Yeah, it's just --
7 right. Not saying that we don't do cost
8 effectiveness or won't evaluate that, but
9 certainly the TRC is not --

10 MS. HOLMES: Right, and this also raises
11 a date issue for you, as well; we've already
12 discussed the date issue, --

13 MR. McLAUGHLIN: Right.

14 MS. HOLMES: -- because of your fiscal
15 year.

16 MS. BERLIN: Susie Berlin for NCPA.
17 With regard to the section (a)(4) and (b)(4), we
18 just wanted to reiterate what we had talked about
19 that. NCPA and CMUA and the Southern California
20 Public Power Authority, which represent the
21 majority of the POU's across the state, are working
22 collectively to come up with the means by which
23 especially the smaller POU's can provide data that
24 does help the Energy Commission in their ultimate
25 goal, but in this format it's either impossible

1 for the smaller utilities to put together; or just
2 not cost effective to be able to compile.

3 MS. HOLMES: It's my understanding there
4 have been collaborative efforts between our staff
5 and the --

6 MS. BERLIN: Right.

7 MS. HOLMES: -- municipal utilities that
8 are not reflected yet in the language of this
9 regulation. So I would expect that this would
10 be -- this is not what's going to be formally
11 proposed; that we would reflect what has been
12 worked out between our staff and CMUA and NCPA and
13 the -- I don't personally know what the language
14 is, but I know that there have been --

15 MS. BERLIN: Right.

16 MS. HOLMES: -- further efforts ongoing.

17 MS. BERLIN: It has moved forward.

18 Thank you.

19 MS. HOLMES: Are we done with QFER?

20 PRESIDING MEMBER PFANNENSTIEL: All
21 right, it is 12:15. Let's take an hour and come
22 back at 1:15.

23 (Whereupon, at 12:15 p.m., the workshop
24 was adjourned, to reconvene at 1:15
25 p.m., this same day.)

1 AFTERNOON SESSION

2 1:20 p.m.

3 VICE CHAIRPERSON PFANNENSTIEL: We're
4 back, we're ready to go. Do we have phone
5 connection? Do we have webcast connection?
6 Webcast connection is important for transcribing.

7 All right, so that hasn't closed down.
8 And do we have phone connection again, do we know?
9 Okay, great. I hear somebody. I think it's Jane.

10 So, Caryn, we were moving; we had
11 finished the QFER.

12 MS. HOLMES: We are now at article 2,
13 forecast and assessment (inaudible).

14 I'm looking at my notes here. I don't
15 know that we had any comments on the earlier
16 sections, but I did want to ask in reply to a
17 comment that Dr. Jaske made at the last workshop
18 about whether the language about alternative data.
19 There's a section (inaudible) that allows
20 application (inaudible) alternative. I understand
21 you may go beyond that and specify under
22 (inaudible) and things like that (inaudible) to
23 let people know that I would certainly anticipate
24 (inaudible) and reporting requirements
25 (inaudible).

1 DR. JASKE: Caryn, -- Mike Jaske, CEC
2 Staff -- just to clarify what you're saying, you
3 said move it; I think one perhaps different way to
4 think about 1342 is just to broaden the title and
5 to make sure that its provisions are applicable to
6 the whole set of 1343 to --

7 MS. HOLMES: Right.

8 DR. JASKE: -- 1351 or whatever.

9 MS. HOLMES: It was clear to me that all
10 the other sections in 1342 could be applicable to
11 all of the specific reporting requirements. But
12 one way or the other, the concept is to get all of
13 those, is to get the idea of alternative data
14 submission into a regulation, whether it's this
15 one and the title is changed or a separate one
16 that would apply to all of the reporting
17 requirements that are contained within the CFM
18 sections.

19 MR. SPEAKER: Like in 1302.

20 MS. HOLMES: Pardon me?

21 MR. SPEAKER: Like in 1302 --

22 MS. HOLMES: Well, it wouldn't move it
23 to 1302 because 1302 refers to the QFER, but it's
24 a parallel concept.

25 I think that the first -- I have to

1 check Andrea's notes and see if -- I believe the
2 first comment that we have on the CFM regs was San
3 Diego Gas and Electric and SoCalGas' comments on
4 1343.

5 I don't remember what they referred --
6 MS. SPEAKER: Can I make a comment? I
7 don't think that Caryn's microphone is on.

8 MS. HOLMES: You're correct; it was not.
9 Thank you.

10 As I read the comments from San Diego
11 Gas and Electric Company with respect to 1343,
12 they want to go back and revisit the language in
13 the existing regulation. They state that the
14 design criteria (inaudible) balancing technical
15 aspects of design with the practical limits of
16 available funding. So, --

17 MR. VONDER: Yeah, let me comment on
18 that. Tim Vonder, SDG&E. The way that section is
19 written there's a criteria there that you're
20 expected to meet when designing a survey. There's
21 basically four end use surveys that need to be
22 done, three, I mean. Industrial survey,
23 residential survey and a commercial survey.

24 And there's pretty good guidelines there
25 for detailing the design criteria of the surveys.

1 But one thing that's missing, and that is to
2 balance these technical aspects of design with
3 what's affordable.

4 We then, in the throes of trying to
5 design one survey now, the industrial survey. And
6 the design criteria, in trying to meet it, it gets
7 very very very expensive. We're talking a survey
8 that's going to cost, you know, over \$5 million to
9 get done.

10 And even though these technical aspects
11 of design are important, I believe that the
12 regulations should also make some mention or take
13 into consideration the practicality and
14 affordability of being able to conduct a survey.

15 And if they were, then maybe at various
16 points some sacrifice of technical perfection
17 would have to be sacrificed for affordability
18 purposes.

19 But just to give it a little balance and
20 flexibility. That would be our recommendation.

21 MS. HOLMES: As people who are familiar
22 with these surveys know, there is an alternative
23 compliance option that's already detailed --

24 MR. VONDER: Right.

25 MS. HOLMES: -- in the regulations. At

1 least my understanding is it is intended to design
2 to provide some level of flexibility. The only
3 change that the staff had proposed for this
4 section was to get rid of the reference to SIC
5 codes, since they're not used. And to, again,
6 specifically identify who has to do the surveys.

7 We substituted UDCs with demands of 1000
8 megawatts or more for the phrase large-size
9 electric utility. So, we didn't propose changes -
10 - so staff, I should say, didn't propose changes
11 beyond that. Whether the Committee wants to take
12 them up is, --

13 MR. VONDER: Right, that's something new
14 that we --

15 MS. HOLMES: Right.

16 MR. VONDER: -- earlier interjected
17 here.

18 DR. JASKE: Mike Jaske, CEC Staff. I
19 think -- I have a modest alternative proposal to
20 what Mr. Vonder's raising. And that is to think
21 in terms of what is cost effective.

22 Clearly we want to collect -- don't want
23 to have surveys that are more expensive than the
24 value of the data obtained. That would be silly.

25 The entire premise here of this section,

1 and as we're -- which is unchanged since the
2 '99/2000 cycle, and we're encountering various
3 difficulties as we work through each one of these,
4 residential, commercial, industrial surveys, for
5 the first time pursuant to these regulations, is
6 that the utilities know all about this; and we're
7 sort of clarifying expectations in easier and
8 harder fashions for each one of these things.

9 But that those expectations and budget
10 associated with them is something that's not a
11 giant surprise. And that ought to be accounted
12 for in the IOUs' planning of funding for this
13 general kind of activity. And for that matter,
14 the two large munis, as well.

15 So, I'm a little leery of working in the
16 word affordability, because it sort of connotes,
17 you know, some unilateral ability that they would
18 have to, you know, not have due diligence to
19 pursue appropriate budgets. And therefore the
20 effort was constrained.

21 MR. VONDER: Possibly cost effectiveness
22 and affordability could be both mentioned in the
23 regulations?

24 What we're asking for here is a balance;
25 that it be brought in as part of the design

1 criteria. Right now it's not. It's not even a
2 consideration. But if there is a way to bring it
3 in, make it a consideration, and give it some
4 attention --

5 DR. JASKE: I don't think we have a
6 problem with the concept of cost effective.

7 PRESIDING MEMBER PFANNENSTIEL: Kathy,
8 did your comment involve --

9 MS. TRELEVEN: I'm anticipating 1344.

10 MS. HOLMES: That would be the next one.
11 Are there any more comments on 1343?

12 We had a number of comments on 1344.
13 And before I forget about it, one of the comments
14 that I want to make sure parties address is the
15 question of whether or not we've identified the
16 right people to be filing the right data. We had
17 discussion of this question, trying to identify
18 folks by function. And have we accurately
19 identified who should be complying with the
20 various elements of 1344?

21 I don't know who wants to go first, but
22 I believe all the utilities filed comments on
23 1344, as did AREM.

24 Do you want to go first, Kathy?

25 MS. TRELEVEN: Sure. Kathy Treleven,

1 PG&E. The comments I have submitted here come
2 almost verbatim from the department that took a
3 look at the regs. And I realize that there are
4 lots of long, ongoing discussions that may be
5 deeper than I can go on this material.

6 But the thing that struck our folks in
7 being asked to dice up the customer hourly load
8 shapes more finely is that it would be
9 tremendously expensive. The number 46 million
10 jumped right out at me.

11 Together with the sense that it will be,
12 it'll take awhile to do. And by the time we do
13 it, we will also have an AMI system which can
14 provide that information, you know, virtually for
15 free, at least compared to the \$46 million.

16 I recognize this is an ongoing debate,
17 and that I can only see a piece of it. But my
18 sense is if we could postpone some of the customer
19 hourly load shapes until data collection that's
20 automatic becomes more a part of the utility
21 business, that would be appropriate.

22 PRESIDING MEMBER PFANNENSTIEL: Kathy,
23 would you talk a little bit about your AMI
24 schedule and when you would expect that to be part
25 of --

1 MS. TRELEVEN: We expect that the
2 majority of customers would have an AMI meter by
3 the end of 2009. So, we're just a few years away;
4 maybe one more IEPR cycle.

5 PRESIDING MEMBER PFANNENSTIEL: But then
6 once they had the meter it would take awhile to
7 collect the data. And I don't know whether staff
8 has seen, I certainly have not seen any breakdown
9 of the information that you expect to get under
10 AMI.

11 I know that in the discussion about the
12 value of the meters, or of the advanced
13 technology, there was a lot of discussion about
14 what information would and wouldn't be available.
15 But I've not seen what would be available from
16 that.

17 MS. TRELEVEN: We'd be glad to come talk
18 with the Commissioners and the staff, and perhaps
19 not just as a presentation, but as a chance to
20 interact a little bit more about what information
21 would be valuable to the Commission.

22 MS. MARSHALL: Lynn Marshall, Energy
23 Commission Staff, M-a-r-s-h-a-l-l. I wanted to
24 comment on the -- concerned about the IOUs that
25 we're adding a requirement to produce customer

1 hourly load shapes. This is not a new
2 requirement. This is in the existing regs. It
3 was in the previous subsection (c) hourly loads by
4 customer sector. That reg went into effect
5 September 1, 2002.

6 All we did in revising these regs was to
7 consolidate it. Previously we had a section (b)
8 which was peak estimates by customer sector due in
9 June and the hourly customer sector due in
10 September. We just consolidated those
11 requirements. This is not a new requirement.

12 The utilities have been sending us
13 hourly load shapes by customer sector. So if,
14 indeed, there's this new cost associated with
15 comply with this, either the data you're claiming
16 to send us under those regs is not valid, you
17 know, -- not precise --

18 MS. TRELEVEN: Kathy Treleven, again.
19 My understanding was that the data had somehow
20 deepened the slicing of the customer load sectors,
21 but I'll take that back and I'll also try to spend
22 some time with you and make sure you're connected
23 with our staff, -- that we can get this resolved
24 offline, I think.

25 MR. BROWN: Andy Brown for

1 Constellation. We had some short comments here.

2 One is when you're looking at subsection
3 (a), one of the changes that's happening is a
4 shift from electric utility to LSE. And then the
5 sections below are talking about UDC. And the
6 question that jumps to mind is whether or not,
7 when you're talking about system, et cetera, are
8 you really talking about the utility distribution
9 system. And it's that type of entity, you know,
10 going to the who-has-asked-for-what question
11 versus LSEs.

12 And so some of the questions that you
13 talk about, lower down where it's talking about
14 system information, doesn't really make sense for
15 ESPs, because they might be across multiple
16 systems. So that's one.

17 And two is to the extent some of this
18 information is already provided in RAR reports, is
19 that going to be sufficient?

20 MS. SPEAKER: Yeah, subsection (a) was
21 the one that would apply to ESPs. And this is
22 essentially a codification of the data you're
23 already sending us. So there would be no need to
24 resubmit it. And you're right, subsection (b) is
25 really the utilities' system loads. So ESPs would

1 be submitting under (a); the utilities both (a)
2 and (b). And we can clarify that, I think, in the
3 revised regs drafted.

4 MR. KLATT: Greg Klatt for AREM. Just
5 wanted to clarify that the data in -- the hourly
6 load data is the data that -- are the data that
7 ESPs already provide in connection with the
8 resource adequacy process.

9 MS. SPEAKER: Yes.

10 MR. KLATT: Okay. And is that
11 information available for purposes of the IEPR?
12 Or is it only limited for use with regard to the
13 resource adequacy --

14 MS. SPEAKER: No, the Energy Commission
15 is allowed to use the resource adequacy data
16 submittals for other purposes. We're not limited
17 in any way.

18 MR. KLATT: And just in terms
19 definitions -- I'm sorry --

20 DR. JASKE: At the discretion of the PUC
21 through order we are allowed to have access to
22 that data for purposes other than just RAR
23 compliance evaluation.

24 In a couple instances, and this being
25 one of them, the staff is desirous of our regs

1 authorizing us to collect these data directly, so
2 that we're not at the sufferance of the PUC. And
3 so we are, I think, happy to entertain suggestions
4 that something filed at the PUC can satisfy these
5 regs. So an alternative compliance approach, as
6 we've been attempting to build here in the last
7 two workshops, but I think what's happening is we
8 need to have certain of these things directly in
9 our regs so that we're not at the mercy of the PUC
10 changing its decisions.

11 MS. HOLMES: I just want to make a
12 general comment about the point that Mike just
13 made, and that's all of you know who are involved
14 with both PUC and CEC proceedings, the CPUC can
15 change its reporting requirements very quickly.
16 They don't have to go through the formal
17 rulemaking process the way we do.

18 And so it would be very very difficult
19 for us to catch something that they changed
20 because it would take us a long time to go through
21 a rulemaking cycle if they decided to drop
22 something that we needed.

23 And that's why we want to have something
24 in our regs that is a broad outline of what it is
25 we're looking for. But, as Mike said, we're happy

1 to entertain notions that you would simply provide
2 to us what you provide to the PUC.

3 All we're trying to do is to make sure
4 that should the CPUC decide it doesn't want to
5 cover something any more for a reason of their
6 own, it's not applicable to us. We need to be
7 able to retain the information that we need to do
8 our job.

9 MR. KLATT: Thank you, that's helpful.
10 Greg Klatt for AREM, again. I don't think the
11 ESPs, as a group, really have any heartburn over
12 providing the data. We just want to see if there
13 isn't some way to streamline it, and perhaps
14 because now both agencies are asking for the same
15 data, maybe there's some way we can take care of
16 that easily. Just have it all submitted at the
17 same time to both agencies.

18 Just one definitional issue. Throughout
19 the section the term hourly system load is used.
20 And that doesn't quite fit for ESPs that's defined
21 back -- that needs to be played with a little bit.

22 And I think that was it.

23 DR. JASKE: I agree that that wording is
24 ambiguous. Just to be clear about our intent, it
25 is the same as what you have been providing to use

1 via the PUC. So that, for example, individual --
2 let's use Constellation since Mr. Brown's at the
3 table, Constellation would provide hourly customer
4 load data -- into the three IOU distribution
5 service area subsets.

6 So, we'll find a better way to refer to
7 that other than just system data.

8 MS. SPEAKER: I believe Greg said --
9 about hourly loads (inaudible), and then also
10 separately (inaudible).

11 MR. KLATT: Yes, we had raised that in
12 our comments. Subject to check, I think that's
13 different. I'm not sure that ESPs are required to
14 submit data in both formats to the PUC.

15 MS. SPEAKER: I believe they were
16 supposed to be submitted the last two years and
17 resource adequacy was to have metered load and
18 various levels of losses, and most people did
19 comply with that. So, the wording here is a
20 little different, but it's the equivalent data.

21 MR. KLATT: Thank you.

22 MS. MARSHALL: Lynn Marshall. And I
23 might add by us incorporating this into our regs,
24 it can actually make it more efficient for you
25 because I don't think you would need to include

1 the PUC in this data filing at all, to the extent
2 that it's coming directly to the CEC under our own
3 regs.

4 MR. AOKI: Caryn, Rod Aoki for the --
5 A-o-k-i -- for the Cogeneration Association of
6 California, the Energy Producers and Users
7 Coalition. And you mentioned at this section
8 about who would actually be responsible for
9 reporting this information.

10 So I thought it would be appropriate to
11 raise the issue that we presented in our comments,
12 which is our concern that the definition of LSE,
13 which is in section 1302, would end up capturing
14 and subjecting cogenerators to a number of
15 reporting requirements which simply don't apply to
16 them.

17 And this is one of them, load metering
18 reports. We don't have sector peaks or hourly
19 system loads, for example.

20 Another area that we mentioned in our
21 comments is the resource adequacy information
22 which we're exempted from under AB-380.

23 What we mention in our comments as one
24 solution to this would be to simply state in the
25 definitional section that cogenerator, the define

1 term in section 1302, you know, would not be
2 considered an LSE here.

3 Andy Brown had also mentioned that we
4 might be able to use things that are in statutes,
5 other areas of the NAICS code to address this
6 issue. And I wanted to point out that in section
7 380 of the NAICS code there is a definition of LSE
8 which has a specific exemption for customer
9 generation, cogeneration facilities, which we
10 think would be appropriate to use, as well. I'm
11 sorry, the Public Utilities Code would be
12 appropriate. And I've spoken with Mike Jaske
13 about this; and we think it's something that we
14 can work collectively with you and the rest of the
15 parties to get resolved.

16 MS. HOLMES: (inaudible).

17 MR. AOKI: Great, thank you.

18 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
19 I have a question for Mike quickly. I think when
20 we were talking 1344 used to be the data that in
21 previous years had been applied to the munis above
22 200 megawatts, correct? So there's very few
23 changes for those, correct?

24 Okay, but you're reaching out and
25 touching a few more munis, maybe pulling seven or

1 eight more into the fold here.

2 DR. JASKE: Yes, by dropping down to 50
3 megawatt peak as the threshold for reporting,
4 we're definitely anticipating including a few
5 more.

6 MR. McLAUGHLIN: Right. And, of course,
7 megawatt-wise that's a very small percentage, but
8 I'm not suggesting here that CMUA is saying, heck
9 no, we won't go. What I am saying is that the
10 smaller municipal utilities, some have very few
11 employees, and sometimes the burden might be great
12 to get, for instance, hourly load data. It just
13 might not be there.

14 And granted 5 million and 43 million are
15 big dollars, but when we're talking 10,000 or
16 5,000 that might mean almost a significant burden
17 on a muni. Some munis have reported they don't
18 have this type of data, so.

19 We have volunteered in a previous
20 section of our comments to work collaboratively
21 and cooperatively with the CPUC to actually look
22 out at some of the municipal utilities and see how
23 they report things. And there might be some
24 documentation in the format that we presently
25 provide that can be useful to you in that regard.

1 Did I say CPUC?

2 DR. JASKE: You did.

3 MS. HOLMES: We know what you meant.

4 (Laughter.)

5 DR. JASKE: Certainly the principle,
6 recognizing that only larger utilities are
7 appropriate to do the more intensive customer
8 sector type estimates is well embodied here
9 already. And we think we believe that, subject to
10 check, of course, that there, in fact, are what
11 you would call system level hourly data for even
12 the smaller, smallest POUs simply because of the
13 way they have to report data to the ISO and
14 settlement type things.

15 But it may well be alternative format
16 that's part of that process; but we're happy to
17 work with you any way to sort of thrash through
18 what of those things exist, and how they can be
19 used to satisfy these needs.

20 MR. McLAUGHLIN: Bruce McLaughlin. And
21 that's what I'm requesting, Mike. Throughout my
22 comments I just referred to 1342, so that's
23 another one of our dittos.

24 MS. HOLMES: Other comments?

25 MR. VONDER: Yeah, SDG&E, Tim Vonder.

1 Just one small comment about doing these load
2 studies. I'm not criticizing the regulations
3 here. But just a comment that we're now being
4 expected to use NAICS codes rather than SIC codes
5 to classify our data.

6 And there's a transition period here
7 that we're going to be going through when we start
8 grouping our information by NAICS codes, and
9 getting everything coded correctly in the system.

10 So, we're going to have to be doing more
11 studies and it's going to take awhile to iron
12 itself out. So, just a comment.

13 MS. JONES: This is Melissa Jones. Can
14 I ask a question? When -- didn't the NAICS
15 requirements go into effect a couple of years ago?

16 MS. SPEAKER: 2003.

17 MS. JONES: 2003, so you're still having
18 transitional issues?

19 MR. VONDER: Yeah. And we don't have a
20 long history of data with NAICS codes, that's
21 NAICS coded. So, it's going to take time.

22 ASSOCIATE MEMBER GEESMAN: I guess I
23 would say that the SDG&E service territory was the
24 area that the 2005 cycle where the utility
25 forecast and the staff forecast had the greatest

1 divergence. So we'd attach a pretty high priority
2 in terms of trying to work through whatever data-
3 gathering issues might contribute to narrowing
4 that divergence.

5 We didn't quite know what we were
6 confronted with in 2005 that would properly
7 explain the level of difference between the two
8 forecasts. And I think data is one area where we
9 might be able to reach more closure than we did
10 then.

11 MR. VONDER: Well, we're working toward
12 that.

13 MR. KLATT: Greg Klatt for AREM. As a
14 related question or observation, and I'm not
15 expert on these codes at all, so -- but it was
16 reported to me that on the website for this
17 organization that some of the codes that were in
18 the proposed changed regs are not on the website.
19 And I'm not sure if that means that they're
20 available someplace else, or if they're not going
21 to be official until 2007, or what exactly is the
22 deal.

23 You're looking at me --

24 MS. SPEAKER: We can look into that.

25 MR. KLATT: Okay.

1 MS. SPEAKER: (inaudible) just a
2 clarification. I don't know, with respect to the
3 RAR filings, the annual filing. Is the date
4 that's contemplated here, March, the one that's
5 contemplated going forward for RAR. Because I was
6 trying to look and it seemed like it was done in
7 April. And I don't know if it was just a
8 transitional issue or not.

9 MS. SPEAKER: The due date for the
10 historic loads in the RAR proceeding is March
11 30 -- March 15th, actually. This year they were
12 due March 31st.

13 MR. SPEAKER: Okay, thanks.

14 MS. SPEAKER: -- decision established
15 the 15th.

16 MS. TRELEVEN: Caryn, -- this is Kathy
17 Treleven with PG&E. I do have one more comment on
18 1344. And that is a request that maybe for the
19 transmission component of this transmission sub-
20 area there be some qualifier like to the best of
21 the ability, or based on available data.

22 We don't have high quality hourly loads
23 by sub-area. We do do snapshots and we give that
24 information, or the analysis based on that
25 information, in our ISO transmission grid study

1 reports.

2 MS. HOLMES: From my own personal
3 perspective (inaudible) get this rulemaking
4 package (inaudible) not having the definitions --
5 problem. Again, I will repeat -- call for
6 suggestions, what I provided in the packet, if
7 anybody has an idea on a definition that we can
8 use, it would be very helpful saying (inaudible).

9 (Inaudible - microphone off.)

10 1345 (inaudible), a lot of people
11 (inaudible). I don't know again if there's
12 specific concerns about -- I note that the ESPs
13 have expressed a general concern about 20-year
14 load forecasts. (inaudible).

15 (inaudible) additional concerns.
16 (inaudible) reiterate comments or if you want to
17 add something to them, what I took away from the
18 comments was a general concern about the period of
19 time; a general concern about ESPs versus
20 utilities. And also a concern about overlap
21 (inaudible).

22 MR. VONDER: Well, Tim Vonder with
23 SDG&E, again. First of all, I'd like to apologize
24 to Edison because the SCE comment that Vicki made
25 at the end of our comments on this section we say

1 that SDG&E and SCE strongly suggest. It's really
2 SoCalGas, not SCE. I hope they agree with us, but
3 anyway, that was our mistake.

4 And one other thing. I mention in here
5 that it's difficult technically to do a 20-year
6 forecast, and when what I wrote got edited it got
7 changed. And I didn't mean to say that it's
8 difficult to do a 20-year forecast. What's
9 difficult is doing a 20-year hourly forecast.

10 Because the changes that you want to
11 make are asking for a 20-year hourly forecast.
12 And even though it's mechanically not difficult to
13 do a 20-year forecast hourly, once you get out a
14 few years all your load shapes for the next 15
15 years are going to look pretty much exactly the
16 same.

17 So, the point being the quality of
18 hourly data that we could produce in such a
19 forecast would be, you know, render it really
20 useless.

21 And then I had other comments in here
22 about expanding -- staff didn't recommend this,
23 this is our own -- expanding what goes in the
24 regulations for section 1345.

25 And I think most people would say I'm

1 crazy for recommending expanding regulations, but
2 we were offering our opinion that these
3 regulations should really cover establishing what
4 the exact purpose of preparing and submitting the
5 forecast is; how will it be used; will the CEC
6 Staff be preparing their own forecast; and what is
7 the process that is going to be followed to review
8 and evaluate and adopt a forecast.

9 Now, in years past when we did see a --
10 forecast, all of this was pretty much practiced
11 and we knew exactly what was going to happen and
12 why we were doing it and all of the procedures.
13 But ever since deregulation things have gotten
14 very very fuzzy.

15 And I know that these things are usually
16 dealt with in the forms and instructions, but
17 things are changing after deregulation so much,
18 and things are becoming so fuzzy that we think it
19 might be more appropriate now to bring the answers
20 to these questions into these regulations rather
21 than defer them to forms and instructions. So
22 that was the reason that we mentioned this.

23 ASSOCIATE MEMBER GEESMAN: Well, do you
24 think --

25 MR. VONDER: It's not that they've been

1 ignored always, it's just --

2 ASSOCIATE MEMBER GEESMAN: Do you think
3 the question of the utilities' interest in owning
4 generation in the future is more clear today than
5 perhaps it was two years ago?

6 MR. VONDER: Yes, right.

7 ASSOCIATE MEMBER GEESMAN: I mean you
8 tended in your remarks, in your written comments,
9 to say that, or to reply that some great rubicon
10 was passed in the late 1990s when we deregulated.
11 It would seem to me more pertinent to our
12 discussion today, it would appear over the course
13 of the last year or two that the utilities'
14 interest in generation substantially more clear
15 today than it was a couple of years ago.

16 It may look a lot more like the pre-
17 deregulation environment which may argue, and I
18 don't think it was your intent to make this
19 argument, but may argue more for returning to
20 whatever faith you had before deregulation in
21 these 20-year forecasts.

22 MR. VONDER: Well, that's true, too. I
23 agree that we're getting back to that model. But
24 in addition to that, the forecasts now and the
25 data that's collected is being used for other

1 purposes, other types of analyses, to answer other
2 kinds of questions than it has in the past.
3 You know, life was simpler years ago, and it's
4 getting more complicated.

5 ASSOCIATE MEMBER GEESMAN: Either that,
6 or we thought that it was. And I want to be real
7 clear. I have a deep skepticism about our ability
8 or your ability or anybody's ability to provide a
9 20-year forecast that really serves much value.

10 But at the same time I'm not certain I
11 see the problem with addressing that question,
12 each cycle in the forms and instructions. Why
13 attempt to draw sweeping conclusions today in the
14 regs that we adopt.

15 MR. VONDER: Well, my feeling there is
16 that these questions lie somewhere now between
17 specific instructions on how to do a particular
18 forecast, and policy decisions. I mean they're
19 kind of in the middle at the moment when you don't
20 know exactly what to expect in the next process.

21 Because even though with forms and
22 instructions for the IEPR process, those are going
23 to be forms and instructions to prepare a forecast
24 for that particular purpose.

25 But then the data that's collected and

1 the forecast results that come out of that might
2 be used for other purposes, too. So it's kind of
3 a suggestion. Something to consider.

4 DR. JASKE: But I think -- Mike Jaske,
5 CEC Staff -- from the staff's perspective the
6 broad language here, which is only very little
7 changed from the past, is appropriate for regs.
8 And it's the obligation in each cycle to both
9 prepare forms and instructions that are
10 appropriate for that cycle. And for that cycle to
11 deal with the questions that are included in the
12 Sempra comments.

13 These are good questions that are posed
14 on page 6 of their document. But they are not
15 answerable in perpetuity. And as Ms. Holmes
16 indicated before, the nature of the rulemaking
17 process here, you know, is such that there's this
18 big lag between when we need to change the regs,
19 and when we can accomplish the change in regs.

20 And it's just not, from the staff's
21 perspective, reasonable to have the regs,
22 themselves, customized to the needs of -- they
23 have to be general, and you have to use the forms
24 and instructions process, as we have throughout,
25 sort of customize them to that cycle.

1 It may well be the case, as we did in
2 2005, no one proposes that anything be submitted
3 beyond ten years, even though the regs would allow
4 that. It may well be the case that we'll contract
5 what we ask for from ESPs to only five years or
6 something, to better respond to the issues the
7 ESPs raised about the nature of the customer
8 obligations that they've undertaken in a sort of
9 more ephemeral business relationship than
10 utilities have, you know, under an obligation to
11 serve.

12 So those are the kinds of issues that we
13 simply have to deal with in forms and
14 instructions. And as I said this morning, the
15 IEPR Committee schedule is calling for us to start
16 addressing that quick quickly now, within the next
17 month or two.

18 MR. BROWN: Andy Brown for
19 Constellation. As Dr. Jaske is pointing out, one
20 of the ESP issues here was the substitution of LSE
21 for what had been electric utility. And I think
22 the question, at least in my mind, that gets
23 begged is does the forecast of future loads need
24 to come from a commodity provider, as opposed to,
25 for example, from the distribution, the wires

1 provider.

2 Utilities, themselves, will be doing
3 forecast purposes, distribution system, you know,
4 load growth, anticipating those types of things.
5 That may be a simpler approach.

6 Things like description or a map of
7 where an ESP service territory is doesn't really
8 make sense in this context.

9 And so that was just one of the areas
10 where while the notion of LSE may be appealing,
11 there's another entity that may be doing the same
12 thing and avoid some of the potential problems.
13 For example, UDC.

14 DR. JASKE: Mike Jaske, again. I think
15 it's obvious that in the 2005 IEPR cycle the forms
16 and instructions were configured to address the
17 relationship between the use of the IEPR results
18 in the PUC procurement proceeding, and so, you
19 know, a substantial focus was on the contractual
20 perspective. And that was the way in which all
21 LSEs were appropriately asked to provide load
22 forecasts.

23 We did, almost as a secondary matter,
24 ask the three IOUs to provide UDC sort of area
25 load forecasts. We did not ask for corresponding

1 resource plans that would match up to that sort of
2 physical perspective, as opposed to contractual
3 perspective. That may well end up being the case,
4 the focus of this upcoming IEPR.

5 But I think these regs need to be
6 written in such a way that we have that option in
7 any particular IEPR cycle.

8 MR. KLATT: Greg Klatt for AREM. One
9 issue that came up kind of late from my group was
10 the thought, some consternation about having to do
11 forecasts on an hour load basis. And maybe that's
12 something that'll be in those forms and
13 instructions, themselves, then, you know, can just
14 refer to that discussion. But I did want to raise
15 that, that it was a concern.

16 MS. MARSHALL: I think that we can
17 reword the regs a little bit to make clear that
18 we're not necessarily asking for -- we may, in
19 some cases, want 20 years of forecast. We do want
20 hourly load forecast shapes. We don't necessarily
21 need 20 years on hourly load forecasts.

22 And since the ESPs are already providing
23 that to us through the resource adequacy process,
24 I think we'll certainly take note of that when we
25 design the forms and instructions for the IEPR, so

1 that we're not asking for redundant information.

2 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
3 Clarification. In our written comments we asked
4 for whether the section, subsection (b) there will
5 be the entire source of CEC data for assessment,
6 and then delivery to the CPUC pursuant to AB-1723.

7 DR. JASKE: It's only since the last
8 workshop, and Mr. McLaughlin's sort of making me
9 aware of this newish piece of legislation into the
10 PRC that I'm aware of, what that's now calling
11 for. And we are in the process of trying to
12 figure out how to adapt these requirements to
13 cover that purpose.

14 PRESIDING MEMBER PFANNENSTIEL: Would
15 you just mention a little more about the new
16 legislation?

17 MR. McLAUGHLIN: Actually it was
18 effective January 1st. It's AB-1723, is now
19 Public Resources Code 25302.5, which is in my
20 written comments here. And it requires load
21 forecast by --

22 (Parties speaking simultaneously.)

23 MS. HOLMES: -- copy of it.

24 PRESIDING MEMBER PFANNENSTIEL: No, I
25 know what it is now. I'm sorry, I just missed the

1 reference, thank you.

2 MS. HOLMES: So would it be fair to say,
3 Mike, that you plan to reflect that in whatever
4 revisions you recommend to the Committee?

5 MS. MARSHALL: That's why we added that
6 language to paragraph (b) of 1345. So that's one
7 piece of information we use in that type of
8 analysis. But, going back to the discussion of
9 why we need county level data, our historic
10 level -- our historic data that's currently
11 reported to us by each LSE, by county and NAICS
12 code, would also provide a basis for us to
13 disaggregate our forecast to account for that
14 change.

15 MR. McLAUGHLIN: That's valuable; thank
16 you.

17 MR. KLATT: Yeah, it might well be that
18 if we go to something besides counties it actually
19 creates more problems for my clients. I don't
20 know yet, so, you know, I'm gratified that staff
21 is open to discussing that area.

22 DR. JASKE: One other item that I might
23 as well just volunteer, and that is that again in
24 the context of attempting to sort of differentiate
25 the actual application of this regulation to

1 entities of various sizes, particularly in
2 northern California there are numerous small
3 publicly owned utilities that in many respects do
4 things sort of collectively under the Northern
5 California Power banner.

6 And we would probably be certainly
7 willing to talk with NCPA about them playing some
8 sort of a role as an agent on behalf of the small
9 POUs. They're certainly, for the longer run,
10 forecasting issues. I wouldn't see a problem
11 with, you know, receiving something on a more
12 aggregated sort of basis than individual POU's.

13 MS. BERLIN: Susie Berlin for NCPA.
14 Appreciate that, Mr. Jaske, that's the type of
15 information that NCPA has been trying to collect
16 in a number of different areas from the smaller
17 munis to report. And we would be more than
18 willing to work cooperatively with staff to come
19 up with something that provides you the kind of
20 information that you're looking for, the end
21 result. Thank you.

22 MS. HOLMES: Any more comments on
23 section 1345? Everybody's favorite, 1346,
24 resource adequacy.

25 Obviously there were a lot of comments

1 about whether this is necessary, and overlapped
2 with other filing requirements, and who's in and
3 who's out. I don't know, Mike, do you want to
4 just dive in with a response to the comments? Or
5 do you want people to summarize their concerns?
6 Are you pretty familiar with them?

7 DR. JASKE: I think one of the big ones
8 that people have mentioned is the language in the
9 general sort of preamble asking for four years
10 worth of data. And, again, because of the issue
11 of the inflexibility of our rulemaking process,
12 staff is proposing that we have the latitude to
13 ask for up to four years, even though when we
14 actually construct the forms and instructions for
15 this, we may well not ask for it.

16 The reason a multiyear time horizon is
17 something to consider here is that the PUC,
18 itself, in phase two of the resource adequacy
19 rulemaking has proposed that. It's on the
20 schedule to be examined starting this summer.

21 It presents challenges to numerous of
22 the load-serving entities; there's no doubt that a
23 business plan, a business model of energy service
24 providers would particularly be stretched by such
25 a time horizon.

1 But it is an acknowledged issue, and it
2 has received considerable support in earlier
3 phases of resource adequacy, though the PUC has
4 not yet bought into any particular version of
5 this.

6 And in particular, it is resurfacing
7 itself in the -- perhaps the variation between not
8 extending the time horizon into obligatory
9 purchase, but extending the time horizon into an
10 analysis that far out because of the issues of
11 local capacity requirements and the tradeoffs
12 between generation and transmission and sort of
13 the desire that that capacity requirement be, you
14 know, well understood in a multiyear context.

15 So, I think there's going to be a pretty
16 thorough airing of this whole issue this second
17 half of 2006. And staff would continue to propose
18 that we at least have the latitude to have this in
19 the regs and adjust the actual filing requirements
20 through forms and instructions.

21 MR. VONDER: SDG&E, Tim Vonder. We've
22 already, you know, acknowledged here in today's
23 meeting that this is a duplicative effort between
24 what we submit to the PUC and what we submit here.

25 But with regard to four years worth of

1 data, four years, now, it's kind of like you have
2 a list of everyone's wants; and then, you know,
3 you have a list of needs; and then you have a list
4 of things that you really really need.

5 I think from the people, from the
6 perspective of the people on this side of the
7 table, we would like to see regulations that
8 address what is really really needed. We know the
9 regs that are developed will probably address what
10 is needed.

11 But I think what is being proposed here
12 is what people really would want. You know, it's
13 kind of a wants list.

14 When I think about what we submit to the
15 PUC; they ask us to forecast in detail one year
16 into the future, and to demonstrate that we have
17 resources in place to meet 90 percent of that
18 demand.

19 I mean here I can see, well, you know,
20 if we've got four years here, what are we going to
21 be demonstrating for the other three? I mean is
22 it going to be 80 percent in place or identified
23 for the second year out, and 70 percent, and then
24 60 percent.

25 And I mean by the time you get to year

1 number four and you're having to identify 60
2 percent of your demand in resources, we have a
3 regular, periodic, long-term resource planning
4 process with the PUC that we have to file, and
5 plan ten years out.

6 So, why do we need to do four years?
7 Why can't we do one year for resource adequacy;
8 ten years for resource plan; and if there's a need
9 for anything in between that, the ten-year
10 resource plan should take care of it until the
11 next time we update it.

12 So it's kind of hard for me to see a
13 real need to have four years worth of resource
14 adequacy information.

15 ASSOCIATE MEMBER GEESMAN: You know, I
16 think that from my perspective and I think the
17 perspective of my colleagues on the Commission,
18 speaking strictly from the San Diego Gas and
19 Electric perspective, in looking back over the
20 last several years, you're probably right.

21 On the other hand, reflecting that the
22 concerns that we have expressed about southern
23 California to the north of your service territory,
24 and the difficulties we have faced over the last
25 several years in that territory, and our concerns

1 that existing PUC processes may not be completely
2 adequate to address resource needs in the
3 relatively near-term future, we have a different
4 perspective.

5 The situation in northern California is
6 a lot closer to that in San Diego than it has been
7 in southern California.

8 PRESIDING MEMBER PFANNENSTIEL: Andy.

9 MR. BROWN: We did raise a few comments
10 on this section in our filing. You've touched on
11 some of them with respect to the business model of
12 ESPs.

13 Similarly there's a concept I wanted to
14 toss in because -- and it didn't quite make it
15 into my comments. Under the subsection (b) it
16 talks about generation and capacity aren't under
17 the control of.

18 In the RAR context you may secure
19 capacity but not have an energy call, right. And
20 so there needs to be a recognition that the two
21 products are distinct.

22 And I think this is running to where you
23 were going, Commissioner Geesman. There's a
24 difference, I think, in terms of the IEPR study
25 between understanding the commercial position of

1 various entities as opposed to the physical
2 requirements and capabilities of the system.

3 It would be, I think, from a resource
4 adequacy perspective, more useful to understand
5 whether or not there's sufficiently available
6 instate and import capacity to meet expected
7 loads, as opposed to whether or not someone has a
8 multiyear contractual commitment from that.

9 And so from an ESP's perspective, and I
10 understand Dr. Jaske's trying to draw a
11 distinction between creating broad regs, but
12 reining them in, I guess from our perspective we
13 always look at the regs in terms of they will be
14 used as expansively as they can be.

15 And so much like in the last IEPR
16 session when there were some requests from ESPs to
17 forecast out a number of years, different folks
18 did different things depending on their comfort
19 level of providing estimates of what might happen
20 in the future.

21 I would guess, but I haven't talked to
22 my client about this, though, this guess is on me,
23 that if the reg was to include four years, and
24 that was to be asked for, you would get good data
25 out a year. And after that, you wouldn't get

1 much.

2 And I don't know if that's actually
3 helping your development of a report, again, as
4 opposed to understanding on a larger system basis
5 is there sufficient physical capability to meet
6 anticipated loads.

7 DR. JASKE: Mike Jaske, CEC Staff. I
8 think that by the time these regs take effect, the
9 PUC will be very close to having decided what it
10 was going to do about multiyear. And if it, in
11 effect, jams multiyear down everyone's throat,
12 that's one possibility, then you know, ESPs are
13 going to have to decide how to deal with that.
14 And whether it alters the business proposition
15 that they have had up to this point in time.

16 I think we will anticipate, you know,
17 exercising, you know, the particulars under the
18 umbrella of this reg, you know, appropriate to the
19 issues of some time in 2007 when we actually call
20 for this data.

21 ASSOCIATE MEMBER GEESMAN: In your
22 judgment does the proposed staff draft prejudge
23 that question at the PUC?

24 DR. JASKE: No, it does not. As we
25 quite explicitly refer to forms and instructions

1 here, we're not merely relying upon the 1342, you
2 know, sort of attenuation of whatever's in the
3 regs. So I think we're attempting to distinguish
4 between what these say as the max we can ask for,
5 versus what we would actually ask for.

6 ASSOCIATE MEMBER GEESMAN: And I don't
7 think this Commission has taken any position on a
8 multiyear resource adequacy requirement.

9 MR. KLATT: Greg Klatt for AREM. One
10 other aspect of section 1346 gave us a little bit
11 of heartburn. That was the provisions providing
12 for submission of narrative descriptions of
13 procurement activities.

14 And we're not entirely sure what that's
15 getting at, but our concern is that it's sounding
16 a lot like a procurement, like an AB-57
17 procurement plan like the utilities are required
18 to submit.

19 As you know, ESPs are not under AB-57,
20 and to this point, at least, have not been asked
21 to submit plans to the Commission. And if they
22 are, I anticipate they'll probably resist that
23 idea.

24 So I'm just wondering if you could speak
25 briefly about this and provide some clarification

1 as to what the intent is.

2 (Pause.)

3 MS. JONES: Mr. Klatt -- this is Melissa
4 Jones -- are you referring to a part of section
5 1346?

6 MS. HOLMES: Yes. It says under --
7 about the third line down, Beginning in 2000 each
8 LSE shall submit quantified documentation of its
9 load forecast resource plans and narrative
10 descriptions of its procurement activities.

11 DR. JASKE: Mike Jaske, CEC Staff.

12 MS. JONES: Thank you.

13 DR. JASKE: I think that what we were
14 aspiring to there was in addition to --
15 information, some description of how they were
16 intending on going about accomplishing that. And
17 that mention is particularly suggested by the
18 language of AB-380 that asks the Energy Commission
19 to oversee what the publicly owned utilities are
20 doing, and sort of give a report to the
21 Legislature.

22 And as part of that, because the
23 individual publicly owned utilities are, in
24 effect, allowed to establish their own benchmark
25 for what's considered adequate unless there's some

1 other obligation placed upon them by the ISO or
2 any other legitimate mechanism.

3 We were looking for some sort of
4 explanation beyond just the bare numbers about how
5 it is they were thinking of this whole issue and
6 were going to go about accomplishing it.

7 MR. KLATT: Greg Klatt for AREM, again.
8 Would the type of information you're looking for,
9 at least for ESPs, you think be encompassed by the
10 resource plan?

11 My understanding is this is aimed more
12 at the munis because they don't have -- because
13 they have so much discretion in what they can do.
14 And that you're not necessarily looking for ESPs
15 to be submitting quasi-procurement plans, to use
16 that term of art.

17 DR. JASKE: I think we're not asking
18 ESPs to divulge the recipe by which they go out
19 and procure, you know, specific resources. But to
20 get some general sense of how it is they're going
21 about satisfying resource adequacy in light of,
22 you know, the uncertainties that they have with
23 future customer loads and so forth.

24 So, a narrative description of dealing
25 with, you know, on a certain time horizon the

1 amount of load, et cetera, firm contract versus
2 the load that you might expect to have to re-sign,
3 or the load you might expect to yet acquire. Just
4 sort of a general description of how it is you
5 acquired resources in light of those kinds of
6 uncertainties is the kind of thing we're talking
7 about.

8 MR. KLATT: Thank you.

9 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
10 Sort of on that same vein, we've mentioned in our
11 written comments about the distinction in the CPUC
12 -- or the Public Utilities Code, as far as
13 resource adequacy and how the publics are under
14 9620.

15 And I think one of our concerns would be
16 that the Energy Commission is authorized to
17 collect the necessary data to evaluate our
18 programs because we're supposed to prudently plan
19 for and procure sufficient resources to reliably
20 serve our customers. And so you need to determine
21 if we've done that.

22 So you would look at our resource
23 adequacy plans and et cetera. But, it's not
24 necessarily lock-step with what the CPUC has
25 provided as the requirements they want.

1 So if we're following the same checklist
2 of information you might not be able to adequately
3 assess and get that quality data that you need.
4 And if we didn't look proper in the eyes of the
5 Commission or the Governor or the Legislature,
6 then that could not lend itself to a good IEPR.

7 And that's our concern. And that's why
8 segregating the information -- if, for instance,
9 this narrative is our resource adequacy plan, a
10 number of utilities have adopted plans in the last
11 few weeks formally, in response to -- RO 6723, the
12 ISO tariff. And so those would be public
13 documents available that would demonstrate what
14 our planning reserve margin is, et cetera, et
15 cetera.

16 So that's a form of narrative, would you
17 agree?

18 DR. JASKE: Yes, it is. And maybe the
19 fresh original narrative associate with complying
20 here is simply a description that the POU has
21 chosen to exercise its local regulatory authority
22 under the ISO tariff, and they're not going to,
23 you know, be subject to the default provisions.
24 They want to pursue their own autonomy and here it
25 is.

1 Again, I think that this may be an area
2 where it's fruitful to distinguish the nuances
3 between IOUs and ESPs and publics in the forms and
4 instructions; and would be hard, difficult and
5 maybe not desirable to sort of hardwire that into
6 different sections of, in different language
7 within this reg, itself. But accommodate those
8 differences through the forms and instructions.
9 For those where clearly there are preexisting PUC
10 filing requirements, those entities might well
11 want to suggest that we just accept those and for
12 others, they have to be somewhat more constructed
13 from the checklist.

14 MS. HOLMES: More comments on 1346? On
15 a related topic, 1347, resource plans. I think
16 I'm recollecting correctly that the utilities,
17 SDG&E and SoCalGas and PG&E filed similar comments
18 about redundancy of filings, and requiring similar
19 filings in two different forms.

20 Kathy, do you want to elaborate on that?

21 MS. TRELEVEN: Yes, I'll just speak
22 briefly. Actually what we noticed in 1346 and
23 1347 was in some cases a redundancy that we
24 appreciated; and the times and the amount of data
25 looked like they might be parallel so that one

1 form of data could, in some cases, be essentially
2 the same filing at the Energy Commission.

3 So for us that mostly left the issue of
4 the differing confidentiality treatments between
5 the two, and I'll wait till we get to that to
6 speak to that issue.

7 But it would be nice if they had the
8 same treatment.

9 MS. HOLMES: We don't disagree. Any
10 other comments on 1347? Resource plans.

11 MR. KLATT: Oh, yeah, excuse me. Greg
12 Klatt for AREM, again. One thing that I had just
13 picked up and had not addressed in our comments,
14 and I apologize for that, but I saw in 1347 that -
15 - actually this is in my notes from when I first
16 went through the regs, and I forgot about it until
17 last night.

18 Purchase costs, asking for basically
19 your wholesale procurement costs. But on a unit
20 or a contract-specific basis perhaps is how this
21 could be interpreted. That's concerning from an
22 ESP's perspective, both in terms of -- well, the
23 main thing is confidentiality. And related to
24 that is something of a burden issue. And the
25 question of do you really need that.

1 We can understand where, from the
2 utilities, you might desire that information, but
3 it's not so clear to us that you would really want
4 or need that from ESPs.

5 MR. ALVARADO: Al Alvarado, Energy
6 Commission Staff. I don't really have a good
7 response to this, since the way we were looking at
8 this section was trying to at least identify any
9 of the planning criteria or any metrics that may
10 be relevant when we do examine resource plans.
11 And not only generation costs, but procurement
12 costs, purchase costs might be relevant to at
13 least have a better understanding of what's
14 embraced in these resource plans.

15 That's about all else I can think about
16 right now in terms of application. I do think
17 that, you know, the section will -- so much will
18 be discussed in the other sections will depend on
19 what the scope of issues are that should be
20 addressed for each IEP lifecycle.

21 MS. HOLMES: 1348, I believe that
22 Calpine and AREM and SDG&E filed comments on
23 section 1348, which is pricing and financial
24 information. I think there was a concern about a
25 request, at least from some entities, for resale

1 prices. Currently the regulation simply asks for
2 a forecast of energy prices, we've asked, or staff
3 has asked, or recommended that the Committee ask
4 to have those disaggregated or separated out at
5 the wholesale and retail price.

6 And I don't know if mike or Ruben or
7 somebody is the correct person to explain why, or
8 Al, is the correct person to explain why we wanted
9 both.

10 MR. ALVARADO: Well, the current
11 regulations just specify forecast of prices, and
12 we were intending here to just be a little more
13 specific, that it could be either/or or both
14 wholesale and retail prices.

15 You know, we do examine both wholesale
16 costs; and we also examine retail rates. It's a
17 component that's relevant to when we conduct
18 demand forecasts and other analyses of that sort.

19 MS. HOLMES: Comments? Questions? I
20 think the effort is wearing on --

21 DR. JASKE: Mike Jaske, CEC Staff. Just
22 as an informational augmentation here, we did ask
23 for retail price projections from LSEs in the 2005
24 forms and instructions. We had separate price
25 demand forecast, resource plan and transmission

1 forms and instructions. And we did get retail
2 price projections from the ESPs.

3 They were accompanied by confidentiality
4 requests. And in the end, we all mutually
5 discovered that historic prices by customer class
6 were published on a lagged basis by EIA. And so
7 it was not permissible via our regs to keep
8 confidential the historic prices. But the future
9 prices the Executive Director did keep
10 confidential. But we did receive them.

11 And they are useful insofar as for
12 some customer sectors, particularly industrial,
13 when staff's making area load forecast that
14 encompasses both the IOU bundled service loads,
15 and ESP loads, to have, you know, that sort of
16 blended price to use in the model.

17 ASSOCIATE MEMBER GEESMAN: What makes
18 you think you're getting good information?

19 DR. JASKE: Certainly in the near term
20 that ESPs would give to us, it's our understanding
21 that what we were provided was something that's
22 based on aggregation from individual contracts due
23 to broad customer sector groupings.

24 ASSOCIATE MEMBER GEESMAN: My
25 recollection is last year everybody that made a

1 public disclosure ended up projecting declining
2 real prices. And I'm not certain that anyone in
3 this room, when we went through those filings,
4 believed them. Several of us had a pretty good
5 laugh.

6 It was particularly enjoyable to do that
7 at the expense of the utilities because they do
8 perform a certain quasi-public function, so we can
9 make them look foolish in front of their
10 customers.

11 But with respect to the private ESPs
12 what's the value we get? And I'm not saying I
13 place a very high value on the comedy derived from
14 getting the information from the utilities, but
15 what makes somebody give you what you would
16 consider to be a valuable projection of future
17 prices?

18 MR. ALVARADO: Al Alvarado, Energy
19 Commission Staff. Within this section, we also --
20 the section that's included in the existing
21 language that specifies that information on
22 historical and forecast financial variables would
23 also be -- could be requested.

24 So that would allow the staff to engage
25 in this reality check about how reasonable some of

1 the projections that were given to us, as well as
2 allow staff to develop their own retail price
3 forecast. So that would be one mechanism to
4 provide that reality check.

5 ASSOCIATE MEMBER GEESMAN: Okay.

6 MR. KLATT: Greg Klatt from AREM. First
7 I want to apologize for any inaccuracies in our
8 comments. There's a lot of regulations -- well,
9 no need for excuses, but to the extent there are
10 some, we apologize. It's certainly not
11 intentional; it's certainly no intent to mislead
12 the Commissioners or the Committee or staff.

13 My recollection on the retail versus
14 wholesale stuff was that the retail price by
15 customer sector historic is released by -- is
16 reported to the EIA and released after a year, a
17 year after the data-year ends.

18 But that the ESPs did not report
19 wholesale prices, their costs, to EIA. I know it
20 was one of the two. And therefore there was a
21 determination -- a determination that it wouldn't
22 be given confidentiality because it was already
23 reported or public. Then that was reversed after
24 some time.

25 So maybe we'll have to dig into this and

1 the forms and instructions part of it. But I just
2 wanted to highlight that here.

3 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
4 Some of our members did express concern about the
5 wholesale as opposed to the retail. I was
6 wondering, sort of a roundtable here, if any of
7 the other IOUs, ESPs, whatever, are concerned that
8 wholesale is much more critical.

9 MR. KLATT: Yeah. Greg Klatt for AREM.
10 Yeah, I mean that's our cost. For an ESP that's
11 their cost, and that's pretty much all their cost.
12 And if you have that information you can do a lot
13 with it, as a competitor -- market participants.

14 MS. CHAMBERLAIN: If I can interject,
15 this is Jennifer Chamberlain from Strategic
16 Energy. We have a significant concern about the
17 retail side of this. While Greg explains that the
18 wholesale is our cost, there are a lot of other
19 things that go into (inaudible) and frankly, our
20 regional price is extremely sensitive. We
21 negotiate them, in many cases, on a customer-by-
22 customer basis, and it's our entire product.

23 So I know we have a high sensitivity
24 about releasing particularly without high levels
25 of confidentiality, retail pricing -- it's not a

1 standard offer like a typical IOU (inaudible).

2 MS. HOLMES: Any more comments on 1348?

3 MR. BROWN: Andy Brown for
4 Constellation. I'm sorry if this was already
5 discussed, but is the notion here that you're
6 simply trying to come up with some aggregate of
7 forecast future pricing?

8 Or -- the purpose of collecting this
9 information was something that wasn't clear to me.
10 I could understand on the one hand if you were
11 trying to estimate revenue requirements for an
12 entity. But as Ms. Chamberlain pointed out, for
13 ESPs it's not -- the retail price would more
14 likely be a range rather than a single price.

15 And so it wasn't abundantly clear what
16 the ultimate purpose was.

17 MS. HOLMES: (inaudible).

18 MR. TAVARES: Ruben Tavares,
19 T-a-v-a-r-e-s, CEC Staff. The purpose of
20 requesting retail rates is to actually make
21 revenue requirements for load-serving entities.
22 And (inaudible) ESPs, also; and potentially in the
23 future community choice aggregators, as well.

24 We use the retail prices by customer
25 class as an input to the demand forecast. So is

1 one of the variables that goes into the function
2 of the demand forecast.

3 So that's why we are asking for retail
4 prices so that we can have an estimate of, again,
5 demand forecast by customer class.

6 MR. BROWN: Thank you. And I guess I'm
7 not following what the purpose for the IEPR is of
8 trying to estimate what an ESP's revenue
9 requirements are, particularly when it's not -- it
10 is contract specific and the services provided may
11 not just simply be a provision of commodity.
12 Could be, but it can also be other things like
13 risk management, energy management, things like
14 that.

15 DR. JASKE: Mike Jaske, CEC Staff. In
16 the QFER version of this 1306, we specifically
17 call out and allow for good faith estimate of the
18 commodity price, because that's what we're looking
19 for really. That's the distinguishing thing, in
20 the end, that your customers, you know, are
21 looking for versus (inaudible) service.

22 And clearly that's the kind of thing
23 that we're calling for, or are thinking in terms
24 of here for these projections. And there are
25 considerable variations among the ESPs, as

1 reported by EIA, in the price that they're
2 offering to end users. That's public data.
3 Looking at 2004 calendar year EIA data, and I
4 could, but I don't need to, name, you know,
5 specific ESPs, but there's a range from 5.6 to 9.6
6 cents per kilowatt hour.

7 And those are big enough differences
8 that when staff is making its overall area load
9 forecast that we need to sort of blend those in
10 with the IOU bundled service tariff so that we can
11 do as good a job as we can from the perspective of
12 making that load forecast.

13 MR. KLATT: Greg Klatt for AREM. Could
14 you do without the wholesale part of it? Because
15 when you have both together, you have an entity's
16 margin or spread, cost spread.

17 MR. TAVARES: Certainly, I think we can
18 do that. And, again, I think we wanted to make
19 clear that we are not asking for a specific
20 customer retail price, you know, where you're
21 setting to necessary rate is, or any other
22 customer, specific customer. We're asking for
23 customer class (inaudible) prices.

24 MR. KLATT: So you could do without the
25 wholesale data?

1 MR. TAVARES: I could do it without the
2 wholesale, myself. But I don't know about some of
3 the other offices, other staff in the Commission.
4 But I certainly can do that.

5 MR. KLATT: Thank you.

6 MR. ALVARADO: This is Al Alvarado. I
7 mean there are other potential reasons we may --
8 or other types of analysis we could use wholesale
9 information for, as well as retail rates.

10 The Commission does have building
11 standards; there's always an effort to try and
12 look at the cost effectiveness of those building
13 standards, which apply, which does use retail
14 rates.

15 There's always been questions about
16 incentives for new generation, new entry, you
17 know, a lot of it really is cost based.

18 ASSOCIATE MEMBER GEESMAN: And I guess I
19 can understand how the historic data ends up being
20 cost-based. I'm still trying to figure out the
21 rationale of how the projected information is
22 anything other than wish-based, or hope-based, or
23 guess-based.

24 And frankly, the stuff that was turned
25 in last year was not worth the paper it was

1 written on. I think we need to think this one
2 through.

3 UNIDENTIFIED SPEAKER: I agree.

4 MS. HOLMES: Anything more on 1348? I
5 don't believe anybody filed comments on 1349,
6 transmission system plan and corridor information.
7 I don't believe anybody had comments the last
8 time, either, so.

9 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
10 Of course, we made comments on just about
11 everything, but you're probably recognizing that
12 they're recurring comments, right?

13 MS. HOLMES: Yes.

14 MR. McLAUGHLIN: Okay, thank you.

15 MS. HOLMES: But, no, I wasn't including
16 the general comments. Did you have a specific
17 concern about 1349 or --

18 MR. McLAUGHLIN: No, actually I'm
19 holding them off, a couple of those questions, to
20 a more appropriate time.

21 MS. HOLMES: Okay. Section 1350 is the
22 exemptions. I know that some of the people, you
23 know, obviously we need to clarify the number in
24 there. I think everyone's figured that one out.
25 And also that people have asked, sort of a general

1 construct, make sure you take advantage, Energy
2 Commission, of these exemptions so the
3 application, this provision show exemptions come
4 to you.

5 And I think there were at least one or
6 two comments about whether or not it was
7 appropriate to limit the exemptions 1345, '47 or
8 '48. And I believe that the -- or should -- I
9 believe that for 1346 was not included, because we
10 don't look at that as something that's
11 discretionary. The Commission has the obligation.
12 And I don't know whether people wanted to include
13 something other than 1346 in 1350 exemptions or
14 not. I don't recollect a specific recommendation.
15 Did you have one, Bruce?

16 MR. McLAUGHLIN: Actually I just have, I
17 would like to hear that clarification because the
18 copy I got off the website has 100 megawatts in
19 there. Then, of course, another copy had it 1000
20 megawatts. Then it's the less-than and more-than.
21 So I would really really like to hear exactly what
22 that's supposed to say.

23 MS. HOLMES: 100 megawatts or less in
24 both of the two calendar years preceding the
25 required data filing date. And I take full

1 responsibility for the initial error, the 1000 --

2 MR. McLAUGHLIN: Okay.

3 (Laughter.)

4 MS. HOLMES: Darn!

5 (Laughter.)

6 MS. HOLMES: That would have solved a
7 lot of your problems.

8 MR. McLAUGHLIN: Okay, so it is 1000
9 megawatts or --

10 MS. HOLMES: No. It's 100 megawatts or
11 less.

12 MR. McLAUGHLIN: It's 100 megawatts.

13 MS. HOLMES: Or less.

14 MR. McLAUGHLIN: Now does that comport
15 with 100 million cubic feet? Wasn't the large
16 utility, 1000 megawatts at 100 million cubic feet
17 the old definitions from days of yore?

18 MS. HOLMES: -- in here -- I'm --

19 (Pause.)

20 MS. HOLMES: Large size gas utility is
21 100 million cubic feet or more. So it appears
22 that the staff proposal on the gas side is
23 considerably different than the staff proposal on
24 the electric side. That's current. That's what
25 I'm reading.

1 MR. McLAUGHLIN: Okay, I would say
2 that's an error then. I would say that -- I'm
3 still seeking clarification because it makes a
4 huge difference, of course. And did somebody mean
5 that to be the large category therefore it was
6 1000 megawatts or less, and 100 billion cubic feet
7 or less?

8 MS. HOLMES: My recollection was that
9 the intent was to put in the medium and small, but
10 we had changed medium down from 200 to 100. And I
11 would presume that the same thing would be true on
12 the gas side. So it would be below medium which
13 is 50 billion cubic feet in the current
14 regulation.

15 But I need the gas people to
16 (inaudible); I need to confirm that with them.

17 MR. McLAUGHLIN: Okay, because the way I
18 read this for whatever limit it says, under that
19 limit they have three -- they pretty much say,
20 hey, we need an exemption and you guys will look
21 at it in one procedure, and anybody over that, IOU
22 or whatever, with 20,000 megawatts, they can still
23 apply for an exemption, but it's possibly a little
24 bit more convoluted or official, correct?

25 MS. HOLMES: No. The way -- well, at

1 least, first of all, there's always the discretion
2 within the forms and instructions process. But
3 given that the Commission has now adopted forms
4 and instructions, the exemption process applies
5 solely to the LSEs or the gas utilities that meet
6 the definitions in this regulation.

7 Now, subdivision -- the beginning
8 section says that they can request the exemption.
9 (a) says that the Commission can establish
10 abbreviated reporting requirements for these
11 utilities or LSEs that are exempted from complying
12 with 1345, '47 and '48. And they can also exempt
13 other gas utilities and LSEs.

14 But I don't -- Mike, are you aware of if
15 we ever -- I'm not aware of how that has played
16 out in practice.

17 That sort of issue usually gets
18 addressed through the adoption of the forms and
19 instructions and the qualifiers that apply to
20 that.

21 DR. JASKE: Here's my understanding of
22 what staff wants. First, get rid of this section
23 all together and fold it into the broadened 1342
24 that is going to set up all of the alternative
25 reporting requirements, et cetera, variances off

1 the specific regs.

2 And as we do that, staff would not be
3 interested in having any kind of distinction in
4 reporting requirements at the 1000 megawatt level.
5 That's silly. There are going to be distinctions
6 in the kinds of data that are reported. It's at a
7 cutoff much lower down than that.

8 PRESIDING MEMBER PFANNENSTIEL: So the
9 staff proposal is the 100?

10 DR. JASKE: Correct, that was our
11 intent, to move it down to 100. And then --

12 PRESIDING MEMBER PFANNENSTIEL: But,
13 excuse me, the 100 for electric, but retaining the
14 higher level for gas?

15 MS. HOLMES: That's not clear. I think
16 we've got to clarify that with the natural gas
17 people.

18 DR. JASKE: We have to confess that we
19 did not pay attention to the gas side. So
20 probably there's an implicit change in the gas
21 threshold, but we failed to pay attention to it.

22 And in concert with the point I made
23 earlier, and Ms. Berlin came up and was
24 supportive, staff is probably not interested in
25 the complete exemption from the CFM regs by any

1 utility. Entities acting as agents on behalf of
2 small ones, grouping them together, you know,
3 something like that, you know, seems entirely
4 appropriate. But to not have them file anything
5 at all I think is not where staff wants to be.

6 So we would --

7 PRESIDING MEMBER PFANNENSTIEL: Which
8 isn't what this says, though. So you would need
9 to --

10 DR. JASKE: Well, yes, so we're
11 confessing -- I am confessing if -- we did not do
12 this section correct. I would propose we erase it
13 entirely, fold it into the new 1342 that
14 explicitly calls for different kinds of
15 instructions or compliance mechanisms, depending
16 on who you are, what size you are, et cetera, et
17 cetera.

18 MS. JONES: Mike, let me ask you a
19 question. In the 2005 IEPR we used a 200 megawatt
20 cutoff.

21 DR. JASKE: That's correct.

22 MS. JONES: Is there a rationale from
23 going from the 200 down to 100?

24 DR. JASKE: I think we thought we wanted
25 to get more utilities. There's about three more

1 POUs, at least by the count that I have, and
2 probably two or three more ESPs.

3 ASSOCIATE MEMBER GEESMAN: Now, today
4 you are suggesting that your philosophy is that
5 nobody should be totally exempted?

6 DR. JASKE: I think that's staff's
7 perspective, yes.

8 MS. BERLIN: Susie Berlin for NCPA. I'd
9 just like to clarify something that Dr. Jaske said
10 that -- a comment that I made earlier. And that
11 is that NCPA, who has a lot of these smaller
12 northern California POU's amongst its numbers, is
13 very willing and eager to work with staff to come
14 up with ways to provide reporting of some of this
15 information that may not be easy for the smaller
16 POUs to do.

17 With the limitation that NCPA does not
18 operate these utilities. And the membership does
19 not automatically mean that NCPA has access to all
20 the information and can necessarily provide
21 everything simply because they are members.

22 But to the extent that we can facilitate
23 and this information is available, we are more
24 than willing and eager to work with staff to come
25 up with something. Thank you.

1 ASSOCIATE MEMBER GEESMAN: I guess I
2 still am going to ultimately want to have some
3 sense of how are we going to use this stuff. You
4 know, without knowing the specific information
5 intended for any particular small LSE, I don't
6 have a judgment. I mean, maybe they all ought to
7 be required to submit their addresses and phone
8 numbers, and perhaps more.

9 But wherever we ultimately choose to
10 draw the line around exemptions, I have a
11 fundamental need to understand what are we going
12 to do with the information. How is that useful to
13 state policymaking or state regulatory agency?

14 MS. BERLIN: Susie Berlin for NCPA. On
15 that point, Commissioner Geesman, when we've had
16 discussions with staff we've posed the question to
17 staff, perhaps the best way for us to provide the
18 information that you ultimately want is for a
19 clear enunciation of what it is you want this
20 information for.

21 ASSOCIATE MEMBER GEESMAN: Right.

22 MS. BERLIN: Because we're afraid that
23 you're scooping up too much and then you will
24 waste your own staff resources trying to filter
25 through to find what it is you want.

1 We believe that if the regs in general
2 articulate clearly what the end result is, or what
3 you would like to get out, then it would be more
4 effective for us to provide that kind of
5 information, probably more cost effective and
6 certainly more helpful, I believe, to the CEC
7 Staff to not have to go through buckets and
8 buckets of information to get the grains that
9 you're looking for.

10 ASSOCIATE MEMBER GEESMAN: Well, I think
11 we do have finite resources, be they staff
12 resources or simply brain cell resources. And
13 there are a limited number of things that we can
14 productively work on.

15 I think our productivity erodes as we
16 try and work on too many things. So we need to
17 prioritize, and I certainly recognize each of the
18 prospective respondents to these requirements face
19 resource limitations, as well.

20 And I don't, you know, Kerner got a
21 little carried away, I thought, in terms of
22 attributing too much agreement between himself and
23 me, or perhaps Commissioner Pfannenstiel, as well.
24 I'm happy to confess to a tendency to being a
25 heavy-handed regulator with aspirations for heavy-

1 handed regulation beyond what most of you would
2 probably consider acceptable.

3 But from an information gathering
4 standpoint, it seems to me that we need to be
5 pretty realistic about what quality information we
6 can actually obtain, and what beneficial use we
7 can put that information to.

8 And I think both of those considerations
9 ought to discipline the types of requests we make.

10 This session has become a real
11 sermonizing opportunity for --

12 (Laughter.)

13 ASSOCIATE MEMBER GEESMAN: I apologize
14 for that.

15 MS. HOLMES: And it could be even moreso
16 as we move on to confidentiality.

17 (Laughter.)

18 MS. HOLMES: It's not going to get
19 easier. Does anybody else have any comments on
20 the exemptions, or should we just --

21 MR. SPEAKER: I have a question. So the
22 process, it's going back to the drawing board?

23 MS. HOLMES: Well, I think we have -- we
24 certainly have to clarify what the staff's
25 intention was on the natural gas side. I don't

1 think any of us sitting here in this room know
2 what it was. I think we simply took language from
3 the natural gas office and put it in without
4 paying any attention to it, for which I apologize.

5 And I think we clearly need to talk with
6 the Committee. I think Mike's idea of trying to
7 fold this into the 1342 regulation that talks
8 about delegation pursuant in line with the way you
9 were talking about having some of your submittals
10 be your smaller entities, as well as some of the
11 other procedural requirements, is probably a good
12 one.

13 But in terms of what the substance will
14 be, we clearly need to keep working on that.

15 MR. BROWN: Andy Brown for
16 Constellation. I'd be very reluctant to speak to
17 what and whether Mr. Kerner was agreeing with
18 anything, said previously.

19 I do know that he was under the
20 impression, and this is jumping ahead a bit, that
21 there would be an opportunity after the next
22 revision, particularly in light of the notion that
23 we'd be focusing more on the function of getting
24 the functional entities better defined. That he
25 believed he'd be able to discern if his concerns

1 being addressed, or if additional comments were
2 necessary.

3 MR. SPEAKER: Right. He made that
4 pretty clear.

5 MS. HOLMES: Confidentiality. We got
6 explicit comments on confidentiality from AREM,
7 who I think wanted us to establish some additional
8 categories of automatically confidential data.

9 PG&E made a procedural recommendation
10 about, I think it's in the same vein, actually.

11 MS. TRELEVEN: It is, essentially.

12 MS. HOLMES: And you referenced this
13 question about prior determinations. Let me, for
14 clarity's sake, say that at least in my
15 understanding, and I did write this draft, the
16 intention was to have both prior Commission
17 determinations, decisions by the full Commission,
18 as well as prior Executive Director decisions,
19 include the section that says, if it's already
20 been determined confidential you just need to say
21 where and when.

22 MS. TRELEVEN: Even before?

23 MS. HOLMES: Right. So that -- and I
24 think that's in there. If it's not clear I will
25 make -- to clarify it.

1 And I cannot remember what San Diego
2 said. Oh, San Diego was recommending that the
3 Commission adopt categories consistent with the
4 California Public Utilities Commission.

5 You know, my reaction as a lawyer is
6 that we have the responsibility to make
7 confidentiality determinations based on the
8 information that we have in front of us at the
9 time. That's a requirement, a mandate that's
10 imposed on us by the Public Records Act.

11 Obviously we want to insure consistency;
12 we participated intensively in the CPUC's
13 confidentiality proceeding last fall. We don't
14 know how successful those efforts will have been
15 until we see a proposed decision.

16 So, do people want to walk through the
17 sections, or do they want to just focus on this
18 general question of should we be including other
19 categories of automatically confidential
20 information?

21 MR. KLATT: Greg Klatt for AREM. That's
22 our main issue, is the upfront categories.
23 There's two subsidiary issues, actually tangential
24 issues. Two other issues that have to do with
25 confidentiality that we can also address. But

1 that's the main one for us.

2 MS. HOLMES: Okay, and, Kathy, I think
3 that's the main one --

4 MS. TRELEVEN: That's right. Kathy
5 Treleven.

6 MS. HOLMES: CMUA, did you have --

7 MR. McLAUGHLIN: Yeah, just my general
8 comment all the way through. And I know that we
9 have been granted confidentiality in a couple
10 cases, but since this says private third party --

11 MS. HOLMES: Right, --

12 MR. McLAUGHLIN: -- I'm totally
13 confused.

14 MS. HOLMES: Right, that's correct. The
15 confidentiality regulations divide the information
16 essentially into three categories, Commission-
17 created information that we felt designate. And a
18 lot of that happens as a result of a process none
19 of you are involved with, contracts and grants and
20 loans and such.

21 Information that we obtain from the PUC
22 or the ISO pursuant to agreements where they tell
23 us the information that's confidential, and we
24 respect that.

25 So, for example, when we obtain

1 confidential information from the PUC, our
2 Executive Director enters into a nondisclosure
3 agreement. And so if you want that data, you've
4 determined that it's confidential, we will agree
5 to keep it confidential.

6 And then there's the everybody else who
7 submits data to us as part of our regulatory
8 oversight.

9 And so I don't think that anybody was
10 thinking about the municipal utilities who
11 obviously fall within that category when the
12 definition of private and third party was adopted.

13 The one thing I'll be concerned about as
14 we go through this process is we want to make sure
15 that we distinguish between when you're
16 functioning as somebody submitting information to
17 us because you have generators or because you
18 serve load versus information that we would get
19 from another governmental entity, and were
20 cooperating in some kind of joint function.

21 And I don't know quite right now exactly
22 how to do that, but I do think it's important to
23 distinguish between those two types of functions
24 when we make sure that you're not excluded from
25 the people who can apply for confidentiality on

1 information you submit to us.

2 MS. BERLIN: Susie Berlin. I have a
3 quick question. With regards to the categories
4 one and two, that information has not been
5 discoverable by a third party pursuant to a Public
6 Records request?

7 MS. HOLMES: Anybody can file a Public
8 Records request --

9 MS. BERLIN: Right.

10 MS. HOLMES: -- and we have to evaluate
11 it based on the facts that we have in front of us.
12 Somebody can come in and say we discovered that
13 so-and-so actually disclosed this information or
14 we've discovered some fact that indicates that the
15 initial determination wasn't appropriate, or that
16 the determination may have been appropriate then
17 but isn't any more. And we have to make -- the
18 Commissioners have to make their decision based on
19 the facts in front of them at that time.

20 MS. BERLIN: So, they don't fall
21 automatically after any of the exemptions is what
22 you're saying?

23 MS. HOLMES: If there are exemptions
24 under the Public Records Act from disclosure then
25 presumably the Commission will make that finding

1 and not disclose the record.

2 The fact that somebody can file a
3 request doesn't mean that we're going to disclose
4 it.

5 MS. BERLIN: Correct.

6 MS. HOLMES: But we do have to evaluate
7 whether or not one of the exemptions under the
8 Public Records Act is available based on what's
9 before us at the time that the request is made.

10 MS. TRELEVEN: One of the things that
11 I've often wondered in these discussions is how
12 academic are we being in terms of protecting
13 things from the Public Records Act. How many
14 applications can you get; how often; are they
15 torturous and difficult. Can you give a sense of
16 that?

17 MS. HOLMES: No, most -- well, I can
18 give you a general sense. I have only handled
19 applications periodically when I have stepped in
20 for other people. We get a lot of them. I mean I
21 don't know, I'm thinking we got -- this would be a
22 guess, but I think it's a fairly accurate one -- I
23 would think that we got more than 25 or 30 last
24 IEPR cycle.

25 We get them regularly as part of other

1 activities that we conduct. And I am personally
2 not aware of any Public Records Act request that
3 we received for information that we have
4 designated as confidential.

5 Now, there may have been them, but I am
6 not aware of them. We get lots of Public Records
7 Act requests, and they tend to be things that are,
8 in fact, public and we have to compile them and
9 copy them and send them off to people.

10 If that's a helpful exercise, I mean, it
11 would be something I could try to pull together.
12 It would take me some time, but I could do it.

13 MS. TRELEVEN: Just the one anecdote is
14 helpful already, thank you.

15 MR. BROWN: I know from Constellation's
16 perspective we did provide -- a letter, you know,
17 our over-arching confidentiality concerns. And
18 encouraging the Commission to look at upfront
19 designation of additional information as
20 contemplated under the regulations.

21 There is, also, a great desire to see
22 consistency across the agencies because
23 essentially while understanding they're
24 independent entities, there is a need to try to
25 coordinate and have consistency to the highest

1 degree possible. Not only for administrative
2 convenience at the agencies, but also at the
3 entities, themselves.

4 ASSOCIATE MEMBER GEESMAN: I think that
5 view is strongly shared by the members of this
6 Commission. And I think the briefs that we filed
7 at the CPUC give you a pretty good indicator as to
8 how we think that conformity and consistency ought
9 to be achieved.

10 And if you or any of the other parties
11 in the room want to use those briefs to try and
12 engineer a grant settlement of the PUC proceeding,
13 I'd encourage you to do so. I think that would
14 expedite our process here quite a bit.

15 MR. BROWN: Yes, and I think to a
16 certain extent there was a degree of commonality
17 on a number of those issues.

18 Other than that I don't know if I need
19 to provide additional detail other than, again,
20 suggesting that the code provision provided more
21 recently, I think, does provide a good
22 opportunity. And that should be looked at very
23 seriously.

24 MR. KLATT: Greg Klatt from AREM. I
25 thought I'd just briefly identify the types of

1 data that we thought would be helpful to have up
2 front -- determination -- if I can find it here.

3 1344, the hourly load data. That's the
4 historic hourly load data.

5 1345, the demand forecast. I think the
6 idea there would be to have it held confidential
7 for a couple of years, after which time, you know,
8 the sensitivity goes way down.

9 All of the three-year period that was
10 adopted in the last round of the IEPR cycle,
11 something along that lines.

12 1346, resource adequacy data; that would
13 help to have the same type of protections that we
14 currently have under the protective order for
15 resource adequacy, which is essentially the
16 filings are confidential. The LSE-specific
17 filings are confidential.

18 And then for 1348, the price forecast.
19 And I think I indicated before we probably need to
20 talk offline about that a little bit more, because
21 I'm not sure if I'm entirely clear on that.

22 And I think that's it, that covers it.

23 MS. HOLMES: Do you have a specific
24 recommendation, Kathy, for specific types of data?

25 MS. TRELEVEN: No, I'm just appreciating

1 that, because as I remember in the Energy
2 Commission's discussions in the 2005 IEPR there
3 were probably about five different categories that
4 we were pushing hard for confidentiality.

5 And I know in front of the CPUC there
6 are something like 400 different types of data.

7 MS. HOLMES: (inaudible)

8 (Laughter.)

9 MS. TRELEVEN: And I can't imagine
10 taking, you know, the outcome of those 400 and
11 listing it as items 8, 9, 10 and so on, in the
12 automatic designation. So, I don't have a list
13 right now.

14 MS. HOLMES: All right. And keep in
15 mind that just because something isn't in the
16 automatic designation category doesn't necessarily
17 mean it's going to be a huge hurdle to get it
18 designated as confidential. It does mean that at
19 least initially there needs to be an application
20 process. Assuming it's granted, as I said, you'd
21 have to refer back to that decision in subsequent
22 filings on the same data.

23 MR. BROWN: And with respect to that,
24 particularly because of the notion that if it's
25 been established you can rely on what's happened

1 before, it's wonderful. But it does mean that
2 unless you've had some informal process to discuss
3 these things, with staff, and figure out if there
4 is resistance or not, you have to somewhat shoot
5 the moon with the initial application. And that
6 can be a bit more work than might actually have
7 been needed.

8 MS. HOLMES: But just call us up; I mean
9 we did work with a lot of -- we did work with some
10 of the ESPs last time, we held one or two meetings
11 with them --

12 MR. BROWN: Right.

13 MS. HOLMES: -- for their applications.
14 And I would just encourage you to do that. I
15 think that, you know, as the information in the
16 market changes it's going to be, there may be --
17 the determination of what is and what isn't
18 protestable may change. And so it's probably
19 important to sit down and talk with us about why
20 you think it's sensitive, or why you think it
21 releases customer information unnecessarily so
22 that we can get a sense, before you put together
23 your application, that will tell you how to craft
24 your application and possibly save you a lot of
25 time in the long run.

1 MR. BROWN: Thank you.

2 MR. GULIASI: Les Guliasi from PG&E. I
3 appreciate your offer to have those informal
4 discussions with staff. And I know in the last
5 process, the last IEPR proceeding, those
6 discussions took place on multiple requests for
7 information, and they were always productive.

8 But I would just recommend that you
9 build something a little bit more formally into
10 the process, so that it's not just one party
11 calling the staff, and then another party calling
12 the staff, but convene perhaps a workshop or some
13 meeting whereby all parties interested could
14 discuss this issue and we can come to some common
15 resolution to avoid a lot of extra work and
16 everybody's time.

17 MS. HOLMES: My recollection is that we
18 turned a Committee hearing last year, at the end
19 of the hearing, into a staff workshop on
20 confidentiality. I think it was in the fall. And
21 I think that was helpful.

22 You're suggesting doing that perhaps
23 more than once, or perhaps holding it on a
24 separate day or something like that? Because I
25 know --

1 MR. GULIASI: What I'm suggesting --

2 MS. HOLMES: -- we did do it --

3 MR. GULIASI: Yeah, --

4 MS. HOLMES: -- in the last IEPR cycle.

5 MR. GULIASI: Yeah, well, I'm just

6 suggesting that we do it --

7 MS. HOLMES: Okay, --

8 MR. GULIASI: -- it be formal and it be
9 built in so that we can resolve the issues upfront
10 and avoid lengthy pleadings and multiple requests
11 from multiple parties to the staff.

12 MS. HOLMES: Right.

13 MR. GULIASI: It would just be more
14 efficient to do it in a setting --

15 MS. HOLMES: -- just build that into the
16 IEPR process.

17 MR. GULIASI: Yes, thank you.

18 MS. HOLMES: Thank you.

19 DR. JASKE: At the risk of derailing
20 this agreement, I'm observing that the process
21 we're just now talking about involves, in effect,
22 discussions between the parties who have something
23 they want protected and staff, going as high as
24 the Executive Director, making that decision.

25 And to the extent that there aren't

1 disagreements between the parties and the
2 Executive Director, then there isn't an issue.

3 However, that process doesn't
4 necessarily result in the Commission speaking
5 about what the Commission thinks ought to be
6 confidential.

7 And I think the advantage of having
8 enumerated automatically confidential things in
9 the regs is that the Commission is thinking about
10 what is confidential. And I wouldn't want there
11 to be -- to pursue a process in which we
12 inadvertently create a Executive Director-level
13 codification of things are confidential that the
14 Commission, itself, doesn't believe should be
15 confidential.

16 MS. HOLMES: Mike is raising the point
17 that Kathy and I, I think, discussed this morning,
18 which is the Executive Director's decision is
19 based on a lower standard. And that if somebody
20 appeals and it goes before the full Commission
21 there will be more scrutiny and a higher burden
22 placed on the person or the entity seeking
23 confidentiality.

24 I think that's explicit in the
25 regulations. I think it's good that Mike

1 mentioned it again here this afternoon.

2 It's our attempt to try to make it
3 easier with information that gets filed again and
4 again and again in which there's no public
5 interest, not making people put on their full pace
6 for it, and yet meeting our responsibilities that
7 we have under the law.

8 So there always will be some tension
9 there.

10 On that cheery note, are there more
11 comments on confidentiality? Greg, did you have a
12 couple of other --

13 MR. KLATT: Greg Klatt for AREM. Let's
14 see. This one, I don't know how this will go over
15 very well, but for 2506 in terms of the showing
16 that's required for third parties that are trying
17 to get access to data that have already been
18 deemed confidential, either by the Executive
19 Director or the Commission, I would -- our
20 recommendation is that the showing requirement of
21 the new, kind of the threshold showing requirement
22 for the party seeking access, that there's some
23 new facts or new circumstances that are material
24 to the initial determination.

25 MS. HOLMES: I actually had that

1 language in there, and I mulled it over and talked
2 it over with some of the other attorneys in the
3 office, and I'm not sure that -- in fact, I'm
4 quite sure that we could run into problems with
5 that in court.

6 I think that the law requires us to
7 examine the facts that are in front of us at that
8 time. And so I don't think that we have the
9 ability to do that.

10 Although, as I said, I am sympathetic
11 because originally I had language, in fact if you
12 look at the discussion at the beginning of one of
13 those sections I inadvertently left that in. But
14 I decided that -- and you're welcome, Greg, to try
15 to convince me that I'm wrong.

16 But I don't read the Public Records Act
17 as allowing us to say, well, you might be right
18 now, but you lost your chance, you didn't raise it
19 when we addressed this six months ago when so-and-
20 so filed their appeal. I don't think we have that
21 ability.

22 MR. KLATT: So are you saying that
23 applies to not just my interim suggestion, to have
24 the requirement expanded to include Executive
25 Director determination, but also applies to just

1 Commission determinations?

2 MS. HOLMES: I think that anytime
3 somebody files a request for information that's
4 deemed confidential, the Commission -- the Chief
5 Counsel or the Commission has to look at the facts
6 as they exist.

7 Now, the Commission is certainly capable
8 of saying, well, or the Chief Counsel, we made
9 this decision six months ago and nothing's
10 changed, so you lose.

11 But I don't think that they can say you
12 can't raise it in front of us because we made --
13 we addressed this issue six months ago.

14 MR. KLATT: So, --

15 MS. HOLMES: Do you understand the
16 distinction?

17 MR. KLATT: Yeah, yeah. So you're
18 thinking that this might actually drop out of the
19 regs, then, the showing requirement for new facts
20 or the threshold?

21 MS. HOLMES: Right. I think that that
22 may well have to drop out.

23 MR. KLATT: Okay.

24 MS. HOLMES: I am sympathetic because
25 the last thing we want to encourage is people

1 waiting till the last minute to bring something
2 up; or wait until we've already devoted the
3 resources to a decision and then raising it again.
4 I mean nobody likes the vexatious litigant, but I
5 don't --

6 MR. KLATT: Yeah.

7 MS. HOLMES: As I said, but the fallback
8 is I think that it's a fairly easy determination
9 if, in fact, nothing has changed. I think the
10 Chief Counsel can say no. And then if they're
11 going to appeal, I think it's fairly easy for the
12 Commission to say no.

13 MR. KLATT: Yeah, we would have loved to
14 have had the comfort knowing that we're not going
15 to have to -- every time someone comes in and
16 raises an issue we have to go through the whole
17 case again. That was -- I understand what you're
18 saying, --

19 MS. HOLMES: We agree.

20 MR. KLATT: -- and I'll think about it
21 tomorrow. See if I can --

22 MS. HOLMES: Right, and anybody else
23 who's interested in these confidentiality issues
24 is welcome to weigh in on this. But I just don't
25 see us as having the flexibility that I had hoped

1 we would have --

2 MR. KLATT: -- obvious concern is every
3 time someone comes in, you know, three, four years
4 down the road, or whatever, we have to do the
5 whole case over again.

6 However, I am also comforted by the fact
7 that in the last IEPR round no one came in and
8 asked for access to information that had been
9 deemed confidential, so.

10 MS. HOLMES: Right. And as I said, I am
11 not aware of any requests that we've received for
12 access to information that had been deemed
13 confidential. So.

14 MR. KLATT: Thank you. Then the other
15 one was in the aggregation section, 2507. And I
16 don't mean to jump ahead if someone else had a
17 comment about 2506, but on the aggregation, just a
18 thought to add in another kind of a catch-all
19 provision.

20 In addition to the descriptions of what
21 kind of the standards are for aggregation, a
22 catch-all that says, or to the extent, you know,
23 aggregation will be to the extent necessary to
24 protect customer-specific information.

25 And that's aimed at the case where you

1 have an ESP with one or two customers in San
2 Diego's territory, and that's all they have. And
3 that basically reporting their information, or
4 even an ESP that only has a few customers. I know
5 there's like one that only has one customer, I
6 think, Calpine. Their information in any form
7 released reveals customer-specific information.

8 So that was just the thought to throw in
9 some sort of catch-all there through aggregation.

10 You know, I thought there was another
11 thing, I think, I thought there was, too, but I
12 had it in my notes, so I --

13 MS. HOLMES: There is subdivision --
14 it's subdivision (e)(2).

15 MR. KLATT: Is there? Okay.

16 MS. HOLMES: For information designated
17 as confidential that is other than that identified
18 above has been master aggregate to the point
19 necessary to protect confidentiality.

20 And this retains the provision that we
21 would contact filers before we release aggregated
22 information.

23 Think about that and if that doesn't --

24 MR. KLATT: Right.

25 MS. HOLMES: -- concern, let me know.

1 MR. KLATT: I see the first couple
2 sentences --

3 MS. HOLMES: Right.

4 MR. KLATT: I think that does it. Thank
5 you, Caryn.

6 MS. HOLMES: Anything more on
7 confidentiality?

8 MR. BROWN: I think this was mentioned -
9 - Andy Brown for Constellation -- previously,
10 too. There's a -- the question comes up is a
11 tolling or stay set up in here if it takes longer
12 to come to a decision. There's an assumption of
13 14 days, I think.

14 MS. HOLMES: Right, and I had tried to
15 retain that. And I wasn't quite sure if I was
16 successful or not. I had thought I was. That's
17 in 250 --

18 MR. BROWN: It pops up a couple of
19 times.

20 MS. HOLMES: -- (f)(2), right. The
21 intent certainly is to make sure that it's
22 confidential, and in fact in the litigation that
23 we ended up in last year we ended up extending
24 that because it took people a period of time to
25 prepare their filings. And, you know, we're not

1 going to put that in the regulations, but I would
2 be really surprised. We have no interest in going
3 in and --

4 MR. BROWN: So there's a rule of
5 practice and procedure--

6 (Parties speaking simultaneously.)

7 MR. BROWN: -- that would cover the
8 ability to --

9 MS. HOLMES: We just did it as in terms
10 of an agreement between the parties is what we
11 did, in both pieces of litigation last year,
12 because we have no interest in trying to go in and
13 stop a -- or litigate a TRO, which is probably
14 going to get granted anyway if the issue's going
15 to be heard on the merits in a short period of
16 time.

17 You know, we have 14 days. I kept the
18 14 days in there. It's consistent with the period
19 of time for response to Public Records Act
20 request, which is where it came from initially.

21 If I haven't done it in all sections,
22 please let me know. I did try to retain it,
23 although it got more difficult as I moved things
24 around. And, as I said, in any event, in the past
25 the Commission has certainly been interested when

1 parties can't prepare their pleadings in time, we
2 have not been averse and have been willing to
3 enter into agreements to toll until the pleading
4 can be made in the cases besides on the merits.

5 MR. BROWN: And I think our written
6 comments touched on this, too. And the language
7 wasn't changed. But I just wanted to raise it.
8 There's a notion that if someone was to come in
9 and request confidential information the
10 Commission's to give the submitting party five
11 days notice.

12 MS. HOLMES: Um-hum.

13 MR. BROWN: And I was wondering where's
14 the clock start on that? Because five days,
15 actually, can be pretty quick, particularly if the
16 notice is going to somebody at the company who's
17 there presently, or if it needs to be get routed
18 to the right individual who may not be the one who
19 gets it initially.

20 And so one of the questions was if you -
21 - is the five-day clock starting from when you
22 know they have notice? Or is it starting, is
23 there a presumption on the amount of time that
24 they --

25 MS. HOLMES: It's a one-day clock for

1 the person who submitted the information. The
2 Chief Counsel, if you look at section 2506(b)(2),
3 it says that the petition for inspection is for a
4 record that was received from a private third
5 party, et cetera and so forth, the Chief Counsel
6 shall, within on day of service of the petition,
7 provide a copy of the petition to the person who
8 actually submitted the information.

9 And we simply say, are you okay with
10 releasing it, so that if there's no problem with
11 releasing it we don't have to go through the
12 process of a proceeding. But it's a one-day
13 requirement. We added that, I believe, in the
14 last rulemaking.

15 (Parties speaking simultaneously.)

16 MR. BROWN: -- working days to respond -

17 -

18 MS. HOLMES: You're talking about
19 additional submission --

20 MR. BROWN: Well, it's one thing to --
21 the Chief Counsel needs to relay this promptly --

22 MS. HOLMES: Right.

23 MR. BROWN: -- one day. But then upon
24 receipt of that, it's an issue of internally
25 digesting, figuring out what's going on, and then

1 how you're going to respond.

2 And I suppose the knee-jerk reaction may
3 be someone always saying no. But, the five days
4 just did catch my attention as being pretty fast,
5 knowing how some of these questions have come to
6 me, for example.

7 MS. HOLMES: Right. I understand.

8 MR. BROWN: I'd be getting them on
9 the --

10 MS. HOLMES: And the reason for the five
11 days is the fact that the Commission will still
12 respond within the ten days, --

13 MR. BROWN: Right.

14 MS. HOLMES: -- you know, required by
15 the Public Records Act. Again, I would hope that
16 people would be, you know, I'm sure that as a
17 practical matter if a person seeking the
18 information knows that the answer is going to be
19 no if there's no time allowed for somebody to
20 respond, hopefully it would be interested in
21 reaching an agreement to come up with a schedule
22 that works for everybody.

23 I mean at some point the Commission
24 would have -- if somebody's serious about pursuing
25 it, the Commission has to hold some sort of a

1 proceeding and they have to have complete
2 information in front of them.

3 So, I don't want to extend the statutory
4 time past the ten days because -- I mean the time
5 the regulation --

6 MR. BROWN: Right.

7 MS. HOLMES: -- past the ten days
8 because that's what's in the Public Records Act.

9 MR. BROWN: And the last sentence added
10 in there in terms of what the Chief Counsel is
11 turning around. I mean you're doing --

12 MS. HOLMES: That's new language
13 (inaudible) and I just bumped it in here because
14 it's in the statute.

15 MR. BROWN: Okay, and is that simply
16 giving what the determination was previously?

17 MS. HOLMES: Yes.

18 MR. BROWN: Okay, thank you.

19 PRESIDING MEMBER PFANNENSTIEL: Are we
20 finished with comments?

21 MR. KLATT: Greg Klatt, AREM. I had
22 some questions --

23 PRESIDING MEMBER PFANNENSTIEL: Not
24 quite.

25 MR. KLATT: -- regarding the aggregation

1 but I think it would probably be more useful to
2 pursue those offline.

3 MS. HOLMES: Yeah, again, we have not --
4 we went back and double checked. We have not
5 changed the aggregation at all from what
6 apparently exists in the regs. We had to rephrase
7 it because we were using new definitions of
8 people, but the aggregations, themselves, have not
9 changed.

10 I would suggest that -- she's left -- I
11 would suggest that you call Andrea Gough and talk
12 to her about that.

13 MR. KLATT: Thank you.

14 PRESIDING MEMBER PFANNENSTIEL: I think
15 we need to talk about next steps and consider how
16 we're going to -- we have an awful lot remaining
17 unresolved where we did not reach any kind of
18 consensus other than perhaps recognizing each
19 other's positions. But I don't think we've gotten
20 together on a number of areas here.

21 I think what we heard, Caryn and Chris
22 and Mike, that the next step then is to redraft
23 the regs, incorporating changes from the workshop
24 from the comments and from the workshop.

25 And then I guess at that point it goes

1 to Commissioner Geesman and myself to talk about
2 whether this becomes a -- remains a staff draft or
3 a Committee draft.

4 MS. HOLMES: You could choose to direct
5 the staff to respond to the comments and have
6 another staff draft, or you could, at this point,
7 decide that, no, you're going to come up with a
8 Committee draft, and work with me and the staff to
9 create that. It's really the Committee's choice.

10 ASSOCIATE MEMBER GEESMAN: What do the
11 people around the table think? I mean would it be
12 productive to have another workshop before a
13 redraft? Or would it be more productive to have a
14 redraft and then have a workshop?

15 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
16 Number two. So in other words a draft. We got a
17 lot accomplished today, in my mind.

18 ASSOCIATE MEMBER GEESMAN: Yeah, I think
19 so, too.

20 MR. McLAUGHLIN: And I would love to see
21 a new draft, and to have -- this has been really
22 really profitable. And another workshop like
23 this, that's CMUA's thought.

24 ASSOCIATE MEMBER GEESMAN: Kathy?

25 MS. TRELEVEN: Number two for PG&E, as

1 well.

2 ASSOCIATE MEMBER GEESMAN: Tim?

3 MR. VONDER: Number two, as well. And I
4 just would offer if there's any, upon further
5 review of any of the comments, any questions, feel
6 free to contact us directly.

7 ASSOCIATE MEMBER GEESMAN: Greg?

8 MR. KLATT: Number two.

9 PRESIDING MEMBER PFANNENSTIEL: So then
10 we'll have to work out -- I'm sorry --

11 (Laughter.)

12 PRESIDING MEMBER PFANNENSTIEL: We have
13 reached consensus.

14 ASSOCIATE MEMBER GEESMAN: Let me ask a
15 perhaps more difficult question. Many of you are
16 pretty seasoned observers or participants of the
17 Commission. Is it best for the next draft to be
18 another staff draft? Or is it better to be firing
19 live bullets, recognizing the defensiveness that
20 may put Commissioner Pfannenstiel and myself in,
21 with a Committee draft?

22 MS. BERLIN: Susie Berlin. I believe,
23 based on the last two workshops and the comments
24 filed, just the feedback, that, you know, we've
25 had meetings with staff and whatnot. That we

1 would be better served, all of us would be better
2 served by another staff draft.

3 Perhaps because it is a little less
4 formal and we can do the, oh, that's not really
5 what we meant, let's change it real quick, kind of
6 iterations that we would be precluded from doing
7 if it was a Committee draft.

8 So our recommendation would be for one
9 more staff draft, followed by a workshop.

10 ASSOCIATE MEMBER GEESMAN: Anybody hold
11 a contrary view?

12 MS. TRELEVEN: Commissioners, a slightly
13 contrary view. This is Kathy Treleven, PG&E. I
14 think in some areas things are so rough that
15 another staff draft would be good.

16 But I would like to see some more
17 indications and more direction from the Committee
18 in the next draft.

19 ASSOCIATE MEMBER GEESMAN: Well, I think
20 we will provide the staff with our unvarnished
21 feedback before they come back with another staff
22 draft.

23 MS. HOLMES: We're looking forward to
24 that, Commissioner.

25 (Laughter.)

1 UNIDENTIFIED SPEAKER: In addition to
2 what you've already provided today.

3 DR. JASKE: Well, -- Mike Jaske, CEC
4 Staff. Is there a way in which the degree to
5 which the Committee has provided guidance to the
6 staff, that can be in some way communicated to the
7 parties so that they don't -- they know that in
8 certain sections, you know, this is the changes
9 that they're seeing are sanctioned changes, or at
10 least broad directional changes. As opposed to
11 other sections where maybe the Committee is not
12 able or willing yet to give its guidance.

13 ASSOCIATE MEMBER GEESMAN: You know,, I
14 would say if we actually developed the ability to
15 produce a transcript, read the transcript. Those
16 of you that have sat through the entire day will
17 have a general sense of what either Commissioner
18 Pfannenstiel and I have said in respect to
19 elements of the staff proposal.

20 But I think people just have to be
21 satisfied with that.

22 UNIDENTIFIED SPEAKER: Commissioner
23 Geesman, I guess my take on this is following the
24 last workshop we did meet with the Committee and
25 you did provide us with some feedback at that

1 time, which I think is consistent with what you
2 said today.

3 Then we can respond to -- i think we
4 took pretty thorough notes and can reflect on
5 those. But I would hope that we would be able to
6 meet with the Committee some time soon to --

7 ASSOCIATE MEMBER GEESMAN: Happy to do
8 that at your earliest convenience.

9 UNIDENTIFIED SPEAKER: Thank you.

10 UNIDENTIFIED SPEAKER: There was a
11 thought earlier this morning of bifurcating some
12 of the procedural elements from the data
13 reporting. I don't know if there was any
14 additional thought on that concept.

15 MS. HOLMES: Based on what I heard today
16 I don't think we're that far apart on the
17 procedural issues. The question of whether there
18 should be additional categories of automatically
19 confidential data is the only issue really that I
20 heard about which there might be. And we don't
21 know that there will be and kind of disagreement
22 or discussion.

23 So, at a minimum I don't see a strong
24 reason at this point to hold back on all of the
25 other changes to the procedural sections that have

1 been identified so far.

2 I mean I know that there are comments
3 that we may need to respond to that people did
4 file, but I didn't see enough divergence or lack
5 of a sense of where to go next to pull those
6 sections out at this point. That is my reaction.
7 But the Committee needs to make the final call on
8 that.

9 PRESIDING MEMBER PFANNENSTIEL: Yes, we
10 do. I don't have the answer to that. I think we
11 need to talk to the staff about some of the issues
12 we've heard today.

13 UNIDENTIFIED SPEAKER: Yeah, and I guess
14 my thought would be whether or not you needed to
15 have additional work on potential additional
16 upfront exemptions. And whether or not that would
17 have a slightly different track or not.

18 MS. HOLMES: It's possible that -- I
19 mean that's another possibility is that, you know,
20 maybe those don't get developed until later, and
21 they move on their own separate little small
22 track. But we could do those separately from the
23 other changes, the complaints and investigations
24 and confidentiality.

25 There's no -- I mean I did call and

1 check about this. It doesn't matter how you parse
2 it out for purposes of going through the
3 administrative process.

4 So if we get them done we can include
5 them. If we don't, we can do them as their own
6 sort of separate very small rulemaking, assuming
7 there are some later on. That's not a problem.

8 MR. KLATT: But you don't -- Greg
9 Klatt -- we don't necessarily need to have a
10 separate rulemaking proceeding to --

11 MS. HOLMES: Yes, that's what I'm saying
12 is that you would. But I'm saying that you could
13 have one, if we're not ready to move on additional
14 categories of automatically confidential data at
15 the time that we're ready to move on everything
16 else, we can still start moving the bulk of things
17 along through the administrative process. And
18 have the other follow up with its own separate,
19 very small, very discrete, very focused
20 administrative process that would be later on.

21 UNIDENTIFIED SPEAKER: And I agree with
22 your observation (inaudible) today is that we're
23 not there yet. It was a very productive day, so
24 we may not need to do that.

25 MS. HOLMES: Okay.

1 PRESIDING MEMBER PFANNENSTIEL: Further
2 comments, questions, observations?

3 MS. HOLMES: Just one last question,
4 Commissioner Pfannenstiel, or observation. I'm
5 assuming that there will be some sort of a notice
6 or an order or something that goes out to, I don't
7 know whether it's the service list that we've
8 established, or to the list as a whole, letting
9 people know the dates, what's next and when.

10 PRESIDING MEMBER PFANNENSTIEL: Yes, as
11 soon as we determine that.

12 MS. HOLMES: Okay.

13 PRESIDING MEMBER PFANNENSTIEL: All
14 right, thank you, all.

15 (Whereupon, the Committee Workshop was
16 adjourned.)

17 --o0o--

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